

## APPEAL NO. 000102

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 15, 1999. The issues at the CCH were injury, timely notice to the employer, and disability. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury to her right wrist on \_\_\_\_\_, the respondent (carrier) is not relieved from liability because of the claimant's failure to timely notify the employer, and the claimant did not have disability. The claimant appeals, urging that the hearing officer erred in determining that the claimant continues to suffer the effects of a prior injury rather than having a new injury on \_\_\_\_\_, and that the claimant did not have disability. The claimant asks the Appeals Panel to reverse the hearing officer's decision and render a decision in her favor. Carrier responds that the hearing officer's determinations are supported by sufficient evidence and should be affirmed.

### DECISION

Because claimant did not file an appeal on time, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on December 21, 1999, with a cover letter dated that same date. Claimant's request for review does not indicate the date that claimant received the hearing officer's decision and order. There is an affidavit in the record indicating when claimant's attorney received the decision and order. However, it is the date of receipt by the claimant, rather than the attorney, that controls regarding timeliness of appeals. Texas Workers' Compensation Commission Appeal No. 92219, decided July 15, 1992. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), as amended, the claimant is deemed to have received the decision and order five days after the date it was mailed, or, in this case on Monday, December 27, 1999, because December 26, 1999, fell on a Sunday. A request for review is timely if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and if it is received by the Commission not later than the 20th day after the date of receipt of the decision. Rule 143.3(c). In this instance, the 15th day after the deemed date of receipt was January 11, 2000. Claimant's request for review is dated January 19, 2000, and indicates that it was sent by facsimile transmission to the Appeals Panel on that date. Therefore, the appeal is untimely.

Because claimant did not timely file the request for review, the request for review did not properly invoke the Appeals Panel's jurisdiction and the hearing officer's decision and order became final pursuant to Section 410.169 and Rule 142.16(f).

Judy L. Stephens  
Appeals Judge

CONCUR:

Joe Sebesta  
Appeals Judge

Robert W. Potts  
Appeals Judge