

APPEAL NO. 000156

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 November 29, 1999. The issues at the CCH were maximum medical improvement (MMI), impairment rating (IR), and disability. The hearing officer determined that the appellant (claimant) reached MMI on September 8, 1998; that his IR is 14% as certified by the designated doctor; and that he did not have disability after September 8, 1998. The claimant appeals, urging that the designated doctor's corrected MMI date of September 8, 1999, was not a typographical error but was in accord with certain medical records; that the 14% IR is incorrect; and that he had disability after September 8, 1998. The respondent (carrier) responds that the claimant's appeal was untimely and, in the alternative, that the determinations of the hearing officer are supported by sufficient evidence and should be affirmed.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)), an appeal, to be timely, must be filed or mailed not later than the 15th day after the date of receipt of the hearing officer's decision. Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on December 14, 1999, with a cover letter of the same date. A copy of the hearing officer's decision was remailed to the same address on December 29, 1999. We note that the address given by the claimant on the sign-in sheet for the CCH and the return address on the envelope which contained his appeal are the same as the address to which the hearing officer's decision was sent, except the address to which the decision was sent also included an apartment number. A Dispute Resolution Information System note, dated December 29, 1999 (the same date as the remailing), indicates that a Commission employee attempted to call the claimant about a designated doctor appointment (noting that the claimant had previously missed a designated doctor appointment) and spoke to Mrs. R, who verified the accuracy of the claimant's address, including the apartment number. The appeals file contains nothing indicating that the first hearing officer's decision mailed to the claimant was returned to the Commission by the United States Postal Service (USPS).

Pursuant to Rule 102.5(a), as amended effective August 29, 1999, all communications sent to a claimant will be sent to the most recent address or facsimile number supplied on certain employer or carrier forms, or any verbal or written communication from the claimant. Rule 102.5(d), as amended effective August 29, 1999, provides that, unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed. The Appeals Panel has held that, where Commission records show mailing on a particular day

to the address confirmed by the claimant as being correct, a mere statement that the decision was not received until a later date is not necessarily sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998.

The claimant states in his appeal that he received the hearing officer's decision on January 10, 2000. He offers no explanation as to what happened to the earlier mailing of the hearing officer's decision, which would be deemed received on December 20, 1999 (the fifth day after mailing having fallen on a Sunday), or as to why the second mailing to the same correct address took 12 days to arrive rather than the deemed arrival date of January 3, 2000. Because the first mailing of the hearing officer's decision was not returned as undelivered by the USPS, and the claimant did not offer any proof concerning the nondelivery of the first mailing of the hearing officer's decision, we determine that the great weight of the evidence does not show delivery later than the deemed date of receipt. The hearing officer's decision is deemed to have been received by the claimant on December 20, 1999. The claimant had 15 days, or until January 4, 2000, to mail his request for review to the Commission. A copy of the claimant's appeal was faxed to the Commission's central office by (city 1) field office on January 25, 2000, and another copy was mailed on the same day and received by the Commission on February 1, 2000. We note that even if the claimant's appeal time was calculated based on the second mailing, the appeal is untimely. The second mailing of the hearing officer's decision is deemed to have been received by the claimant on January 3, 2000, and the claimant had 15 days, or until January 18, 2000, to mail his request for review to the Commission.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer have become final under Section 410.169.

Dorian E. Ramirez  
Appeals Judge

CONCUR:

Philip F. O'Neill  
Appeals Judge

Gary L. Kilgore  
Appeals Judge