

APPEAL NO. 000201

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 28, 1999. The issues at the CCH were extent of injury, respondent (self-insured) waiver, and disability. The hearing officer determined that the _____, compensable injury does not include the low back, neck, shoulders, right arm, legs, kidney, myofascial syndrome of these same body parts, or psychological problems; since the appellant (claimant) did not sustain these injuries, the self-insured was not required to timely contest the alleged injuries; and the claimant did not have disability resulting from the injury sustained on _____. The claimant appealed, contending that injuries to these body parts were shown by overwhelming evidence and urging that the hearing officer erred in her determinations on all of the issues. The self-insured responds that the claimant's appeal may be untimely and that the hearing officer's decision was correct and should be sustained in all respects.

DECISION

A timely appeal not having been filed, 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 decision of the hearing officer was distributed to the parties on January 12, 2000, under a cover letter of the same date. The claimant indicates in his appeal that he received the hearing officer's decision on January 17, 2000. Pursuant to Section 410.202, an appeal must be filed within 15 days of receipt of the hearing officer's decision. As the claimant acknowledges in his appeal, the 15th day after he received the hearing officer's decision was February 1, 2000. A facsimile copy of the claimant's appeal was transmitted to the Commission and the line across the top of each page of that copy shows that it was received by the Commission on February 1, 2000, at 18:55, which is 6:55 p.m. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.3 (Rule 102.3), as amended effective August 29, 1999, provides in part:

(c) Normal business hours in the Texas workers' compensation system are 8:00 a.m. to 5:00 p.m. Central Standard Time with the exception of the Commission's El Paso field office

(d) Any written or telephonic communications received other than during normal business hours on working days are considered received at the beginning of normal business hours on the next working day.

(e) Unless otherwise specified by rule, any written or telephonic communications required to be filed by a specified time will be considered timely only if received prior to the end of normal business hours on the last permissible day of filing.

The facsimile copy of the claimant's appeal is stamped and received February 2, 2000, by the Commission's Chief Clerk of Proceedings and that stamped notation is marked out in red pen with an "X". That copy is also stamped as received on February 1, 2000. However, pursuant to Rule 102.3, quoted previously, it is considered received on February 2, 2000, and is untimely.

Another copy of the claimant's appeal was mailed to the Commission. Although the cover letter with that copy is dated February 1, 2000, the envelope which contained it shows a postage meter date of February 2, 2000. The mailed copy is thus untimely under Rule 143.3(c).

The claimant's 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.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Dorian E. Ramirez
Appeals Judge