

APPEAL NO. 000261

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 30, 1999. The issue at the CCH was the respondent's (claimant) average weekly wage (AWW). The hearing officer determined that the per diem payments are clearly wages and that the claimant's AWW is \$720.00. The appellant (carrier) appealed, contending that the claimant's AWW should be \$251.07 and that the per diem paid to claimant should not be considered part of his wage. The appeals file contains no response from the claimant.

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 signed for by the carrier's Austin representative on January 21, 2000. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 156.1(a) (Rule 156.1(a)), each carrier shall designate an Austin representative to act as agent for receiving notice from the Commission, and, under Rule 156.1(c), notice to the carrier's representative is notice from the Commission to the carrier. Therefore, the carrier received the decision of the hearing officer on January 21, 2000, when its Austin representative received it, not on January 24, 2000, as the carrier states in its appeal.

Pursuant to Section 410.202 and 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. Thus, the last date for the carrier to timely file an appeal would be Monday, February 7, 2000 (the 15th day having fallen on a Saturday, the deadline was extended until the following working day, see Rule 102.3(a)(3), as amended, effective August 29, 1999). A facsimile copy of the carrier's appeal was received by the Commission on February 8, 2000, as is so stamped. The cover letter of the carrier's appeal is dated February 8, 2000. The appeal is thus untimely.

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.

Tommy W. Lueders  
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.  
Chief Appeals Judge

Joe Sebesta  
Appeals Judge