

APPEAL NO. 000285

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 January 14, 2000. The issues at the CCH were injury, notice, and disability. The hearing officer determined that the appellant (claimant) sustained an injury within the course and scope of his employment on _____; that the claimant did not timely report his on-the-job injury and did not have good cause for failing to timely report it; and that the claimant has sustained no disability. The respondent (carrier) files a conditional request for review, to be considered only if the claimant timely files a request for review, challenging the hearing officer's determinations that the claimant sustained an injury within the course and scope of employment on _____, and that that injury may have prevented the claimant from obtaining and retaining employment at wages equivalent to his preinjury wage. The claimant appeals, disagreeing with certain findings of fact, contending that later x-rays showed a more serious injury to the same arm which was previously injured in a nonwork-related injury, and that before the x-rays were taken he was terminated on the suspicion that he was going to file for workers' compensation. The claimant asks that the Appeals Panel reverse the hearing officer's decision and hold that his injury is compensable. The carrier responds that the claimant's appeal is untimely and that there is sufficient evidence to support the hearing officer's determinations and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. The carrier asks that the claimant's appeal be held to be untimely or that the hearing officer's decision be affirmed.

DECISION

A timely appeal not having been filed by the claimant, we dismiss the carrier's conditional appeal, and 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 January 27, 2000, with a cover letter of the same date. The claimant states that he received the hearing officer's decision on February 14, 2000.

Pursuant to Rule 102.4(a), as amended effective August 29, 1999, all written communications to a claimant shall be sent to the most recent address or facsimile number supplied by 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 decision and order of the hearing officer five days after it was mailed. The Appeals Panel has held under the previous rule 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's return address on the envelope which contained his appeal is the same as the address to which the hearing officer's decision was sent. The claimant does not offer any explanation why the hearing officer's decision was not received in five days and does not present any evidence of misdelivery or other delay in the mail. Under Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on Tuesday, February 1, 2000, five days after it was mailed. The claimant had 15 days, or until Wednesday, February 16, 2000, to mail his request for review to the Commission. The claimant's certificate of service recites service on the Commission and the carrier on February 28, 2000, and the envelope which contained the claimant's appeal is postmarked February 29, 2000. The claimant's appeal is, thus, untimely, having been mailed after the 15-day deadline, February 16, 2000.

The carrier's appeal was conditioned upon the timely filing of an appeal by the claimant. The claimant's appeal being untimely, we dismiss the carrier's conditional appeal. The claimant's appeal being untimely and the condition of the carrier's appeal not having been met, the jurisdiction of the Appeals Panel was not properly invoked and the decision of the hearing officer have become final under Section 410.169.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Tommy W. Lueders
Appeals Judge