

APPEAL NO. 000368

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 12, 2000. The issues at the CCH were injury and disability. The hearing officer concluded that the appellant (claimant herein) did not sustain a compensable injury on \_\_\_\_\_, and did not have disability. The claimant appeals arguing that the hearing officer's ruling was contrary to the evidence. There is no response to the claimant's request for review from the respondent (carrier herein) in the appeal file.

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 January 26, 2000, with a cover letter of the same date. The claimant states that he received the hearing officer's decision on February 6, 2000.

Under 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 had 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 Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998.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 any other delay in the mail. Under Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on Monday, January 31, 2000, five days after it was mailed. The claimant had 15 days, or until Tuesday, February 15, 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 17, 2000, and the envelope which contained the claimant's appeal is postmarked February 17, 2000. The claimant also sent a copy of the appeal by facsimile transmission to the Commission which is dated "02/17/00 THU 17:59," and is file-stamped by the

Commission as received on the next business day, Friday, February 18, 2000. This file-stamp is not surprising given the facsimile transmission was after 5:00 p.m. However, this file-stamp is not controlling in the present case. What is controlling is that the claimant did not transmit his request for review to the Commission by February 15, 2000, and it is therefore 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.

Gary L. Kilgore  
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.  
Chief Appeals Judge

Tommy W. Lueders  
Appeals Judge