

APPEAL NO. 000430

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 16, 1999, with the record closing on December 27, 1999. The issues at the CCH were injury, date of injury, disability, and timely notice to the employer. The hearing officer determined that the appellant (claimant) did not sustain an injury in the course and scope of employment in the form of an occupational disease; the claimant therefore did not have disability; the claimant, without good cause, did not timely report the injury to the employer; and the date of injury under Section 408.007 is _____. The claimant appeals, expressing her disagreement with the hearing officer's determinations and evidentiary rulings. The claimant asks that the hearing officer's decision be reversed and remanded. The appeal file contains no response from the respondent (carrier).

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 first mailed to the claimant on January 12, 2000, at a (city), post office box which the claimant gave as her address on the sign-in sheet for the CCH. The hearing officer's decision was remailed to the claimant on January 27, 2000, at a post office box in (state), which is the same as the return address on the claimant's appeal. The claimant states in her appeal that she received the hearing officer's decision "on the 2 day of 14th, 192000 [sic]." We will interpret this as a statement that she received the decision on February 14, 2000.

Under Rule 102.5(d), as amended effective August 29, 1999, unless the great weight of evidence indicates otherwise, the claimant is deemed to have been received the decision five days after it was mailed, or February 1, 2000, computing the deemed date from the remailing to the (state) address. Under the prior version of the cited rule, 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 offers no explanation for or proof of the late receipt of the hearing officer's decision. 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 her request for review to the Commission. The adhesive label attached to the USPS Express Mail envelope which contained the claimant's appeal reflects that postage was paid on February 23, 2000, and the claimant's appeal was received by the Commission's Chief Clerk of Proceedings on February 25, 2000. The appeal is thus untimely, having been mailed after the 15-day deadline.

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.

Alan C. Ernst
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Elaine M. Chaney
Appeals Judge