

APPEAL NO. 000452

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 31, 2000. With regard to the four issues before him the hearing officer determined: 1) that respondent/cross-appellant (claimant) had not suffered an injury to her left leg, SI joint or low back on _____; 2) that claimant's ability to obtain and retain employment was not the result of a compensable injury and therefore claimant did not have disability; 3) that claimant timely reported her injury; and 4) that claimant had not made a knowing election of remedies.

The appellant/cross-respondent (carrier) files a conditional request for review, to be considered only if the claimant files a timely request for review, challenging the hearing officer's determinations as to timely reporting of an injury and election of remedies. The claimant filled out the certification form portions of the Texas Workers' Compensation Commission's (Commission) blue brochure entitled "Review of Claims Disputes by the Commission's Appeals Panel." The certification date is shown as February 28, 2000, and the brochure is stamped as received by the Commission's Chief Clerk of Proceedings on March 10, 2000. The claimant also filed an "Addendum to Initial Appeal" (addendum), with a certification date shown as the "03 day of [left blank], 00," mailed on March 28, 2000 (as shown by the USPS adhesive label on the envelope), and stamped as received by the Commission on March 30, 2000, appealing the hearing officer's determinations that the claimant did not suffer an injury to certain body parts on _____, in the course and scope of her employment and that she did not have disability as a result thereof. The appeal file does not contain a response from either party to the other party's appeal.

DECISION

A timely appeal not having been filed by the claimant and the carrier's conditional appeal being dismissed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

The Appeals Panel has held that a claimant's filing of a signed copy (in the sample certification block) of this brochure is inadequate as an appeal because the claimant "did not adequately state the grounds upon which review was requested nor indicate disagreement with any portion of that decision." Texas Workers' Compensation Commission Appeal No. 94973, decided September 1, 1994. 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 Commission show that the hearing officer's decision was mailed to the claimant on February 14, 2000, with a cover letter of the same date. Under Rule 102.5(a), as amended effective August 29, 1999, all notices and written communications to the claimant or claimant's representative will be mailed to the most recent address on certain documents. Rule 102.5(d), as amended 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. Under Rule 102.5(d) and Rule 102.3(a)(3), the claimant is deemed to have received the hearing officer's decision on Tuesday, February 22, 2000, the first working day after the fifth day after it was mailed (the fifth day having fallen on a Saturday and the next Monday having been a holiday). The claimant had 15 days, or until Wednesday, March 8, 2000, to mail her request for review to the Commission. The USPS adhesive sticker on the envelope which contained the claimant's appeal indicates postage was paid on March 28, 2000. The addendum is thus untimely, having been mailed after the 15-day deadline. The Appeals Panel has held that a supplemental brief which is untimely will not be considered. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992. Carrier in its appeal requests that the appeal be considered only if claimant files a timely request for review. Claimant having failed to do so, carrier's conditional appeal is not met and is dismissed.

The claimant's filing of the blue brochure being insufficient to constitute an appeal and her addendum being untimely, the jurisdiction of the Appeals Panel was not properly invoked by either document. The claimant having not filed a timely appeal, the conditional appeal of the carrier is dismissed. The decision and order of the hearing officer have become final under Section 410.169.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Elaine M. Chaney
Appeals Judge