

APPEAL NO. 000552

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 February 9, 2000. The issue at the hearing was extent of injury. The hearing officer determined that the back, neck, and right shoulder are not part of the _____, compensable injury. The appellant (claimant) appeals, citing evidence he believes proves that the compensable injury extends to the body parts in question and asking that the hearing officer's decision be overturned. The carrier responds that the hearing officer's decision is supported by the evidence and should be affirmed.

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 distributed to the claimant on February 18, 2000, under a cover letter of the same date. The claimant's appeal states that he received the hearing officer's decision on March 2, 2000.

Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 102.5(a) (Rule 102.5(a)), as amended effective August 29, 1999, all written communications to a claimant will be sent to the most recent address supplied by the claimant or identified from other specified sources. Under amended Rule 102.5(d), unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed, or in this instance on Wednesday, February 23, 2000. Under the previous version of Rule 102.5, which also concerned a five-day deemed date of receipt, the Appeals Panel 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 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 Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998.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 return address on the envelope which contained the claimant's appeal is the same as the address to which the hearing officer's decision was sent. The decision was not returned to the Commission, nor is there any indication of misdelivery. Under Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on Wednesday, February 23, 2000, five days after it was mailed. 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, or, in this case, by Thursday, March 9, 2000. The claimant's certificate of service recites service on the Commission and the attorney for the self-insured on March 15, 2000, and the envelope in which the claimant's appeal was mailed bears a USPS adhesive sticker showing postage paid on March 15, 2000. (We note that the self-insured's Austin representative did not sign for the decision until Tuesday,

February 22, 2000, immediately after the three-day holiday weekend, but, even using that date as the mailing date, the claimant's appeal would be untimely by one day.) The appeal is 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.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge