

APPEAL NO. 000695

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 14, 2000. The issues at the hearing were the date of the claimed injury; whether the appellant (claimant) sustained a compensable injury; and whether claimant had disability. The hearing officer determined that the date of the claimed injury was _____; that the claimant did not sustain a compensable injury; and that the claimant did not have disability. The claimant appeals, requesting that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) responds, urging affirmance.

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 March 9, 2000, under a cover letter of the same date. The claimant's appeal states that he received the hearing officer's decision on March 20, 2000. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 102.5(a), as amended effective August 29, 1999, all written communications to the claimant will be sent to the last known address. Amended Rule 102.5(d) provides that, 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. The Appeals Panel held under the previous version of Rule 102.5 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 Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998. Commission records show that the hearing officer's decision was mailed to the claimant at the address used as his return address on the envelope containing his appeal. Since the hearing officer's decision was sent to the correct post office box and there is no indication that it was returned or misdelivered, under Rule 102.5(d) the claimant is deemed to have received the hearing officer's decision on Tuesday, March 14, 2000, five days after it was mailed. The claimant had 15 days, or until Wednesday, March 29, 2000, to mail his request for review to the Commission. The envelope which contained the claimant's appeal is postmarked March 31, 2000. The claimant's 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.

Elaine M. Chaney
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge