

APPEAL NO. 000785

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 March 21, 2000. The issue at the CCH was extent of injury. The hearing officer determined that the appellant's (claimant) injury sustained on _____, does not extend to and include headaches, an injury to the cervical spine, or an injury to the thoracic spine. The claimant appeals, contending that she "proved beyond the preponderance of the medical evidence" that her injury extended to these conditions. The respondent (carrier) responds that the hearing officer's decision is correct 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.

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 March 23, 2000, with a cover letter of the same date. The address to which the hearing officer's decision was sent is the same as the address which the claimant gave on the sign-in sheet for the CCH.

Under Rule 102.5(a), as amended effective August 29, 1999, all communications sent to a claimant will be sent to the most recent address or facsimile number supplied on certain employer or carrier forms or any verbal or written communication from 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 hearing officer's decision five days after it was mailed. The Appeals Panel has held, under the previous version of this 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 Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998.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 states in her appeal that she received the hearing officer's decision on March 29, 2000. We are not able to determine that the great weight of evidence shows delivery later than the deemed date of receipt. The hearing officer's decision is deemed to have been received by the claimant on March 28, 2000, five days after it was mailed.

The claimant had 15 days, or until Wednesday, April 12, 2000, to mail her request for review to the Commission. The Certificate of Service in the claimant's appeal indicates service on the carrier's attorney on April 13, 2000; a copy of the claimant's appeal was sent by

facsimile to the Commission on April 13, 2000; and the envelope which contained the copy of the claimant's appeal which was mailed to the Commission is postmarked April 14, 2000. The appeal is untimely, having been faxed and mailed after the 15-day deadline.

The claimant's 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.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Dorian E. Ramirez
Appeals Judge