

APPEAL NO. 000858

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 12, 2000. The hearing officer determined that the appellant (claimant) did not sustain disability from October 9, 1999, through January 11, 2000. The claimant appeals, urging that the evidence established that he had disability. The respondent (carrier) replies that the hearing officer's decision is supported by sufficient 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.

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 30, 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 Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998.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 his appeal that he received the hearing officer's decision on April 5, 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 April 4, 2000, five days after it was mailed.

The claimant had 15 days, or until Wednesday, April 19, 2000, to mail his request for review to the Commission. The certificate of service in the claimant's appeal indicates service on the carrier's attorney on April 20, 2000. The envelope which contained the copy

of the claimant's appeal which was mailed to the Commission is postmarked April 21, 2000. The appeal is untimely, having been 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.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Gary L. Kilgore
Appeals Judge