

APPEAL NO. 000882

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 hearing officer determined that the _____, compensable injury is not a producing cause of the hernia of the appellant (claimant) and that claimant did not have disability resulting from either the alleged back injury sustained on _____, or the alleged hernia sustained on _____. The claimant appealed, contending that the hearing officer's determinations are against the great weight and preponderance of the evidence. The respondent self-insured ("carrier" herein) responded that the hearing officer's determinations are not in error.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1995; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; Texas Workers' Compensation Commission Appeal NO. 941225 decided October 24, 1994.

Records of the Commission reflect that the hearing officer's decision was distributed to the claimant on March 31, 2000, with a cover letter of the same date. The claimant states in his appeal that he received the hearing officer's decision on April 5, 2000, the same date as the deemed date of receipt under Rule 102.5(d), as amended effective August 29, 2000. The transmittal letter sent with claimant's appeal is dated April 19, 2000. Claimant's certificate of service recites service on carrier's attorney on April 20, 2000, and the envelope which contained the claimant's appeal bears a postage meter date of April 20, 2000, and is stamped as received by the Commission on April 26, 2000. The claimant's appeal was mailed on the 15th day after receipt of the hearing officer's decision. However, the claimant's appeal was received by the Commission more than 20 days after the claimant received the hearing officer's decision. Therefore, claimant's appeal is untimely. Section 410.169 provides that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

The hearing officer's decision and order have become final under Section 410.169.

Judy L. Stephens
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Elaine M. Chaney
Appeals Judge