

APPEAL NO. 000885

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 March 21, 2000. The hearing officer determined that the appellant (claimant) sustained a compensable injury on _____; and that the compensable injury of _____, did not extend to the claimant's temporomandibular joint disorder (TMJ) and post-traumatic stress disorder. The claimant appealed, complaining of the exclusion of certain evidence and contending that the hearing officer's determinations are against the great weight and preponderance of the evidence. The respondent (carrier) responded, urging that the hearing officer acted properly in concluding the evidence in question and reciting evidence which it argues supports the hearing officer's decision.

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 April 6, 2000, under a cover letter of the same date. The claimant's appeal states that she received the hearing officer's decision on April 10, 2000. Although Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), as amended August 29, 1999, provides for a deemed date of receipt five days after the date of mailing, a signed acknowledgment of an earlier date of receipt prevails over the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 950972, decided August 7, 1995. Pursuant to Section 410.202, an appeal must be filed within 15 days of receipt of the hearing officer's decision. Rule 143.3(c) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after receipt of the hearing officer's decision. The claimant received the hearing officer's decision on April 10, 2000, so the last day on which she could timely file an appeal was on Tuesday, April 25, 2000. The claimant's Certificate of Service recites service on the carrier's attorney on April 26, 2000; one copy of the claimant's appeal was sent by express mail on April 26, 2000, and received by the Commission the next day; and a facsimile copy of the claimant's appeal was sent to the Commission on April 26, 2000. The claimant's appeal is therefore untimely.

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.

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge