

APPEAL NO. 001059

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 23, 2000. With respect to the issues before him, the Hearing Officer determined that the Appellant (Claimant) did not sustain a compensable occupational disease injury; that the date of the alleged injury is _____; that the respondent (Self-insured) is relieved from liability pursuant to Section 409.004 because of the Claimant's failure to timely file a claim, without good cause for his failure to do so; and that the Claimant did not have disability. In his appeal, the Claimant essentially challenges those determinations on evidentiary sufficiency grounds. In its response to the Claimant's appeal, the Self-insured asserts that the Claimant's appeal was not timely filed. In the alternative, the Self-insured urges affirmance.

DECISION

Determining that the Claimant's request for appeal was not timely filed with the Texas Workers' Compensation Commission (Commission) and that the jurisdiction of the Appeals Panel has not been properly invoked, the decision of the Hearing Officer has become final under 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 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, 1994; 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 April 18, 2000, with a cover letter of the same date. 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. In this instance, the Claimant is deemed to have received the hearing officer's decision on April 23, 2000. In his appeal, the Claimant states that he received the hearing officer's decision on April 24, 2000, the sixth day after it was mailed. The Claimant did not present any evidence to explain his receipt after the five-day deemed date let alone the great weight of the evidence contrary to the deemed date of receipt. The 15th day after April 23, 2000, is May 8, 2000. The Claimant's appeal

is postmarked May 9, 2000. Since the Claimant's appeal was postmarked on the 16th day after his deemed date of receipt of the hearing officer's decision, it was not timely filed.

The Hearing Officer's decision and order have become final under Section 410.169.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge