

APPEAL NO. 001078

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 9, 2000. The issue at the CCH was extent of injury. The hearing officer determined that there is not an injury to the appellant's (claimant) right knee which naturally flowed or resulted from the compensable injury of _____. The claimant appeals, contending that she injured both knees doing leg extensions as part of a work hardening program. The respondent (carrier) responds that the claimant's appeal is untimely, that the hearing officer's decision is supported by the evidence, and that the Appeals Panel should find the appeal untimely or affirm 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 March 14, 2000, under a cover letter of the same date. The claimant states in her appeal that she did not receive a copy of the hearing officer's decision until May 6, 2000, when she received a copy from her former attorney. She attaches to her appeal a photocopy of a letter dated May 4, 2000, from her attorney withdrawing from her case and advising her that she has 15 days from March 14, 2000, to appeal the hearing officer's decision. Also attached is a photocopy of the envelope from the attorney's office postmarked May 5, 2000. The Dispute Resolution Information System (DRIS) reflects two DRIS notes; one, dated May 8, 2000, indicating that the claimant called, wants to appeal the hearing officer's decision, and states that she just received the hearing officer's decision the previous week, resulting in the scheduling of an appointment for May 10, 2000; and a second, dated May 10, 2000, indicating that the claimant and a friend came to the field office, where her appeal was completed, and that the claimant stated she did not receive the hearing officer's decision until May 6, 2000, when her former attorney mailed her a copy. The file contains no indication that the copy of the hearing officer's decision mailed to the claimant on March 14, 2000, was returned to the Commission by the United States Postal Service.

Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(a) (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 by 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 that, where Commission records show distribution on a particular day to a claimant's correct address, a mere statement that the decision was not received in the mail is not sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 94117,

decided March 3, 1994. In the case at hand, the address to which the Commission mailed the hearing officer's decision to the claimant is the same as the return address shown on the envelope in which claimant mailed her appeal to the Commission. Commission records do not reflect that the hearing officer's decision was returned to the Commission by the United States Postal Service, and the claimant does not give any explanation for not receiving the hearing officer's decision from the Commission. Under these circumstances, we deem, pursuant to Rule 102.5(d), that the claimant received the hearing officer's decision on Monday, March 20, 2000, the fifth day after mailing having fallen on a Sunday.

Pursuant to Section 410.202 and 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. Since the claimant is deemed to have received the hearing officer's decision on March 20, 2000, the claimant had 15 days, or until Tuesday, April 4, 2000, to mail her request for review to the Commission. The claimant's certificate of service recites service on the carrier's attorney on May 10, 2000, and the envelope which contained the claimant's appeal bears a United States Postal Service adhesive sticker showing postage paid on May 10, 2000. The claimant's 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.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge