

## APPEAL NO. 001084

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 April 18, 2000. The hearing officer determined that the appellant (claimant), who did not appear at the CCH, reached maximum medical improvement on April 8, 1999, with an impairment rating (IR) of 15% based on the report of the designated doctor (selected by the Texas Workers' Compensation Commission (Commission)), which he found not to be contrary to the great weight of the other medical evidence. The claimant appeals, contending that the designated doctor asked him to perform certain movements which he could not perform consistently and which he should not have been asked to perform. The respondent (carrier) asserts that the decision should be affirmed, noting that the only IR in the record is the 15% IR from the designated doctor.

### DECISION

A timely appeal not having been filed with the Commission and the jurisdiction of the Appeals Panel not having been properly invoked, 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 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 for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994.

Records of the Commission reflect that the hearing officer's decision was distributed to the parties on April 20, 2000, under a cover letter of the same date. Rule 102.5(d), 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. Thus, the claimant is deemed to have received the hearing officer's decision five days after April 20th, namely on April 25, 2000. The claimant states that he received the hearing officer's decision on April 28, 2000, eight days after it was mailed, but presents no evidence to explain his receipt after the five-day deemed received date, let alone to show why the great weight of the evidence is contrary to the deemed date of receipt. The 15th day after April 25, 2000, is May 10, 2000. The claimant's appeal is postmarked May 12, 2000, the 17th day after the date he is deemed to have received the hearing officer's decision and was, thus, not timely filed.

The hearing officer's Decision and Order have become final pursuant to Section 410.169.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Dorian E. Ramirez  
Appeals Judge

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Judy L. Stephens  
Appeals Judge