

## APPEAL NO. 001106

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 April 12, 2000. The hearing officer determined that the appellant (claimant) did not have disability beyond June 11, 1998; and that claimant reached maximum medical improvement on June 11, 1998, with a zero percent impairment rating (IR). The claimant appealed, contending that the zero percent IR assigned by Dr. R does not assess the entire injury; that Dr. R did not follow the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association; and that Dr. R's certification is against the great weight of the medical evidence. The claimant also urges that he still has disability. The claimant asks that the Appeals Panel award the 31% IR certified by Dr. B or remand for a rehearing. The appeal file does not contain a response from the respondent (carrier).

### DECISION

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

Pursuant to Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (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. Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on April 19, 2000, under a cover letter of the same date. The hearing officer's decision was mailed to the claimant at the same address as the return address on the envelope which contained the claimant's appeal. Under Rule 102.5(d), as amended, effective August 29, 1999, 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, or on Monday, April 24, 2000. The claimant states in his appeal that he received the hearing officer's decision on April 25, 2000. Even using the later date, April 25, 2000, as the date of receipt, the claimant had 15 days, or until Wednesday, May 10, 2000, to mail his request for review to the Commission. The claimant's certificate of service indicates that a copy of the claimant's appeal was served on the carrier on May 15, 2000, and the envelope which contained the claimant's appeal is postmarked May 15, 2000. The claimant's appeal is untimely, having been mailed five days after the 15-day deadline, even using the date the claimant said he received the hearing officer's decision.

The 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.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert E. Lang  
Appeals Panel  
Section Manager