

APPEAL NO. 001129

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 11, 2000. The issue at the CCH was whether the appellant (claimant) sustained a compensable injury on _____. The hearing officer concluded that the claimant did not sustain a compensable injury. The claimant appeals contending the evidence showed she suffered a compensable injury. The respondent (carrier) replies that the decision of the hearing officer is sufficiently supported by the evidence.

DECISION

We lack jurisdiction because the claimant's request for review was not timely filed and the decision and order of the hearing officer have become final by operation of Section 410.169.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.16 (Rule 142.16) provides that the Texas Workers' Compensation Commission (Commission) shall furnish the parties a copy of the hearing officer's decision. In regard to communications from the Commission, Rule 102.5 provides, in relevant part, that:

- (d) For purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed; the first working day after the date the written communication was placed in a carrier's Austin representative box located at the Commission's main office in Austin as indicated by the Commission's date stamp; or the date faxed or electronically transmitted.

Section 410.202(a) provides as follows:

To 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.

Rule 143.3(a)(3) provides that a request for review of the hearing officer's decision shall be filed with the Commission's central office in Austin "not later than the 15th day after receipt of the hearing officer's decision. . . ." Rule 143.3(c) goes on to provide the following:

- (c) A request made under this section shall be presumed to be timely filed or timely served if it is:
- (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision, as provided in subsection (a) of this section; and
 - (2) received by the Commission or other party not later than the 20th day after the date of receipt of the hearing officer's decision.

Finally, Section 410.169 provides in relevant part: "A decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party. . . ."

In the present case, according to Commission records, the Commission distributed a copy of the decision to the parties on April 26, 2000, under a cover letter of the same date. The claimant does not state in her request for review the date she received this decision. Under Rule 102.5(d), the claimant was presumed to have received this notice five days after it was distributed or by May 1, 2000. There is no evidence contrary to this date of receipt before us. The claimant had only 15 days, or by May 16, 2000, to mail her appeal to the Commission. Instead, the claimant mailed her request for review to the Commission postmarked May 17, 2000. Thus, under Section 410.169, we must find that the decision of the hearing officer is final.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge