

## APPEAL NO. 001156

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 issue at the CCH was whether the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. C on July 7, 1999, became final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The hearing officer determined that Dr. C's certification did become final. The appellant (claimant) appeals, contending that the claimant received a Notice of Maximum Medical Improvement/Impairment Rating Dispute (TWCC-32) in which the respondent (carrier) disputed Dr. C's IR within the allowable time period for a dispute; that the claimant told the adjuster that she did not agree with Dr. C's IR; and that the determinations of the hearing officer are against the weight and preponderance of the evidence. The claimant asks that the Appeals Panel reverse the decision and order of the hearing officer and award her medical and income benefits. The carrier responds that the claimant did not dispute Dr. C's certification of MMI and IR until November 30, 1999; that the carrier did not intend to dispute Dr. C's certification and the claimant did not know of the carrier's TWCC-32 within the time period for dispute; and that the hearing officer's determinations are supported by the evidence. The carrier asks that the hearing officer's decision be affirmed.

### 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 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 26, 2000, under a cover letter of the same date. The claimant states in her appeal that she received the hearing officer's decision on May 1, 2000. The 15th day after May 1, 2000, the date the claimant received the hearing officer's decision, is Tuesday, May 16, 2000. While the cover letter with the claimant's appeal is dated May 15, 2000, and the claimant's certificate of service does not indicate the date of service on the carrier's attorney, the envelope which contained the claimant's appeal is postmarked May 18, 2000, and was received by the Commission on May 22, 2000. Since the claimant's appeal was not mailed within the 15-day time period provided for by Rule 143.3(c), it is untimely. Section 410.169 provides that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

The hearing officer's decision and order have become final under Section 410.169.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Judy L. Stephens  
Appeals Judge