

APPEAL NO. 001211

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 May 3, 2000. The hearing officer determined that the appellant's (claimant) compensable injury does not extend to include an injury to the left shoulder; that the respondent's (carrier) contest of the compensability of the alleged left shoulder injury was not based on newly discovered evidence, but that did not preclude the carrier from contesting that extension and this is not considered reopening the issue of contestability since the compensability of the left shoulder injury had not been determined; that the claimant has had disability; and that the issue of whether the claimant has reached maximum medical improvement is not ripe for adjudication and, thus, was not properly before this hearing. The claimant appeals, contending that the hearing officer's determinations as to extent of injury and carrier waiver were an abuse of discretion by the hearing officer. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The carrier responds that the hearing officer's determinations as to extent of injury and waiver are supported by the great weight and preponderance of the credible evidence, the hearing officer did not abuse his discretion in reaching his decision, and the hearing officer's determination as to extent of injury was correct, citing Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)).

DECISION

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

Determining that the claimant's request for appeal was not timely filed with the Texas Workers' Compensation Commission (Commission) and that the jurisdiction of the Appeals Panel has not been properly invoked, the decision of the hearing officer has become final under Section 410.169.

Records of the Commission show that the decision of the hearing officer was distributed to the claimant on May 8, 2000, under a cover letter of the same date. Under Rule 102.5(d), as amended effective August 29, 2000, unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision on Saturday, May 13, 2000, five days after it was mailed.

Pursuant to Section 410.202, an appeal must be filed within 15 days of receipt of the hearing officer's decision. Rule 143.3(c) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after receipt of the hearing officer's decision. The last day for the claimant to timely mail her appeal was Monday, May 29, 2000 (the 15th day having fallen on a Sunday, Rule 102.3(a)(3)). A facsimile copy of the claimant's appeal was received by the Commission

on May 30, 2000. The claimant's appeal is therefore untimely, having been filed after May 29, 2000. See Texas Workers' Compensation Commission Appeal No. 001059 dated June 21, 2000.

The claimant's appeal being untimely, the decision of the hearing officer has become final. Section 410.169.

Thomas A. Knapp
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Susan M. Kelley
Appeals Judge