

APPEAL NO. 001394

On May 16, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issue by deciding that respondent (carrier) is entitled to adjust appellant's (claimant) temporary income benefit rate based on bona fide offers of employment for the periods of January 2, 2000, through January 30, 2000, and from April 1, 2000, through the date of the CCH. Claimant requests that the hearing officer's decision be reversed and that a decision be rendered in her favor. Carrier contends that claimant's request for appeal was not timely filed and requests that the hearing officer's decision be affirmed.

DECISION

Claimant's request for appeal was not timely filed. Thus, it did not invoke the jurisdiction of the Appeals Panel and the hearing officer's decision and order have become final under 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 appeal 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 Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Under Rule 102.5(d), as amended, unless the great weight of the evidence indicates otherwise, claimant is deemed to have received the hearing officer's decision five days after the date mailed.

Records of the Commission reflect that the hearing officer's decision was mailed to claimant on May 24, 2000, with a cover letter of the same date. The hearing officer's decision was mailed to claimant at the same address as is shown as her return address on the envelope in which she mailed her appeal. Claimant does not state when she received the hearing officer's decision. The fifth day after May 24, 2000, was May 29, 2000. The 15th day after May 29, 2000, was June 13, 2000, and the 20th day after May 29, 2000, was June 18, 2000. The United States Postal Service adhesive label on the envelope in which claimant's request for appeal was mailed shows postage paid on June 15, 2000. Claimant's request for appeal was received by the Commission on June 20, 2000, and was untimely. Even if claimant had not received the hearing officer's decision until May 30, 2000, because May 29, 2000, was a national holiday, claimant's request for appeal would still be untimely because the 15th day after May 30, 2000, was June 14, 2000, and claimant's request for appeal was not mailed until June 15, 2000.

Pursuant to Section 410.169, a decision of a hearing officer regarding benefits is final in the absence of a timely appeal. The hearing officer's decision and order have become final under Section 410.169.

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. Stephens
Appeals Judge

CONCURRING OPINION:

I concur that the appeal was untimely, although I do not agree that the deemed date of receipt was May 29, 2000, because we know that regular mail was not delivered on Memorial Day. Rather, the deemed date falls on May 30, 2000, but the appeal is still untimely because it was not filed within 15 days of that date.

Susan M. Kelley
Appeals Judge