

APPEAL NO. 001418

On May 18, 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 issues by deciding that the respondent/cross-appellant (claimant) did not sustain a compensable injury in the form of an occupational disease; that the date of injury under Section 408.007 was _____; that the claimant gave timely notice of her alleged injury to her employer; and that the claimant has not had disability. The claimant requests that the hearing officer's decision that she did not sustain a compensable injury in the form of an occupational disease and that she has not had disability be reversed and that a decision on those issues be rendered in her favor. The appellant/cross-respondent (carrier) filed a conditional request for appeal, requesting that, in the event the claimant files a timely appeal, the hearing officer's decision that the date of injury was _____, and that the claimant gave timely notice of her alleged injury to her employer be reversed and that a decision be rendered in its favor on those issues.

DECISION

The claimant's request for appeal was not timely filed. Thus, it did not invoke the jurisdiction of the Appeals Panel. Because the carrier's appeal is conditioned on the claimant's having filed a timely appeal, and that condition not having been met, the carrier's appeal is dismissed. The hearing officer's decision has 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 15th 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, the claimant is deemed to have received the hearing officer's decision five days after the date it was mailed. The Appeals Panel has previously held that, with regard to the timeliness of a carrier's appeal, the five-day deemed date of receipt in prior Rule 102.5(h) did not control over an earlier signed acknowledgment of receipt. Texas Workers' Compensation Commission Appeal No. 950972, decided August 7, 1995.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on June 2, 2000. The claimant states in her appeal that she received the hearing officer's decision on June 6, 2000. The 15th day after June 6, 2000, was Wednesday, June 21, 2000, and that is the date by which the claimant had to mail her

appeal to the Commission. The certificate of service in the claimant's appeal states that the appeal was mailed to the Commission and the carrier on June 22, 2000. The envelope in which the claimant's appeal was mailed to the Commission is postmarked June 22, 2000. A facsimile copy of the claimant's appeal was transmitted to and received by the Commission on June 22, 2000, which was after the 15-day period for filing the appeal. We conclude that the claimant's appeal was not timely filed with the Commission.

The carrier filed a conditional appeal, stating that, in the event that the claimant perfects a timely appeal of the hearing officer's decision, the carrier challenges the hearing officer's conclusion that the claimant timely reported her alleged injury. Because the claimant did not file a timely appeal, the condition stated in the carrier's appeal for considering its conditional appeal has not been met and we, therefore, dismiss the carrier's appeal.

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

Robert W. Potts
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Alan C. Ernst
Appeals Judge