APPEAL NO. 001455

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 March 23, 2000. The hearing officer made findings on issues relating to disability, maximum medical improvement (MMI), and impairment rating (IR) to reflect the agreement of the parties that was announced at the CCH. The appellant (claimant) was represented by an attorney.

The claimant appeals pro se and says she was misrepresented by her attorney. Specifically, she argues that the designated doctor had assigned an 18% IR, but that she eventually agreed to a 14% IR. She says she did so without understanding the implications of the 15% threshold for eligibility for supplemental income benefits. She includes information to show that the decision and order was not mailed to her correct address and that she has timely filed an appeal within 15 days of receiving the remailed decision. The respondent (carrier) responds that the appeal was untimely. The carrier draws a parallel between the contentions of non-receipt of the decision and the carrier's non-receipt of earlier critical documents in the claim. The carrier alternatively points out that the claimant was represented when she entered into her agreement and was, in fact, active during the brief CCH in pinning down the definition of disability as different from the Social Security definition. The former attorney for the claimant has filed a statement and proof of withdrawing from representation effective April 3, 2000.

DECISION

We affirm the decision of the hearing officer, noting also that the appeal was untimely.

We note at the outset that the decision of the hearing officer amounted to nothing more than a memorialization of an agreement of the parties with respect to a period when it was agreed there was no disability and the claimant's date of MMI and IR, which were July 22, 1999, and 14%, respectively. Section 410.166 provides that an oral agreement that is preserved in the record of the CCH is final and binding. Matters that are unilaterally asserted on appeal which go to the level of understanding or communications between client and attorney cannot be remedied in this forum.

We note that it appears that the appeal is untimely. The decision of the hearing officer was first mailed to the claimant on April 12, 2000; however, although the hearings cover sheet for the decision in the file has the claimant's correct address, the decision was mailed to another address. We will consider the Dispute Resolution Information System (DRIS) notes attached to the claimant's appeal, in light of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), which states that the Texas Workers' Compensation Commission (Commission) shall deem the date of receipt of one of its communications to be five days after the date mailed "unless the great weight of evidence indicates otherwise."

The DRIS notes record that on April 17, the claimant called and said she did not receive a copy of the hearing officer's decision. The Commission employee noted that the address was wrong and changed the address on the claimant's file. There is no mention in this note of mailing another copy of the decision.

On May 11, 2000, the claimant called again and spoke to another employee at the Commission, who noted that she informed another employee in the Hearings Division who was to mail a copy to the claimant. It appears that the address in the Commission's records at that point was confirmed as correct. On May 24, 2000, the claimant called again requesting a copy, stating that she had not received an "original" copy of her order. This employee noted that she would send a copy to the claimant's address "in DRIS."

On May 31, the claimant talked to yet another employee who, apparently not understanding that earlier contacts had been made, informed her, the claimant, that once the decision was received back from Austin, she would be mailed a copy. The claimant called Austin and spoke to a clerk in the Hearings Division on June 9 and asserts receipt of the copy of the hearing decision mailed by this clerk.

The notes could be clearer about what course of action was taken by the Commission employees. It does appear, however, that a change of address was processed and that subsequent copies of the decision were mailed on May 11 and 24 and could be deemed as received within five days of those dates. The appeal was not timely filed with respect to either date. Because of the dispositive statute on agreements made at a CCH, however, we need not engage in a more protracted discussion of whether the repeated calls to the Commission constitute a "great weight" against the deemed date and, accordingly, affirm the decision.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge