

APPEAL NO. 001467

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 May 25, 2000. The issue at the CCH was extent of injury. The hearing officer determined that the respondent's (claimant) on-the-job accident of _____, resulted in an injury to the claimant's cervical spine, in addition to an injury to the claimant's right shoulder, and that the claimant's cervical spine injury is compensable. The appellant (carrier) appeals, contending that these determinations are so against the great weight and preponderance of the evidence as to be manifestly unjust and urging that the hearing officer's decision and order should be reversed. The claimant responds that the evidence clearly supports the hearing officer's decision, cites certain evidence, and urges 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.

The carrier states in its decision that its attorney received a copy of the hearing officer's decision on June 8, 2000. However, the Appeals Panel has held that the pertinent date for determining the timeliness of an appeal is the date the party, not the attorney, received the hearing officer's decision. Texas Workers' Compensation Commission Appeal No. 92219, decided July 15, 1992. Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was signed for by the carrier's Austin representative on June 6, 2000. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 156.1(a) (Rule 156.1(a)), each carrier shall designate an Austin representative to act as agent for receiving notice from the Commission, and, under Rule 156.1(c), notice to the carrier's Austin representative is notice from the Commission to the carrier. Therefore, the carrier received the decision of the hearing officer on June 6, 2000, when its Austin representative received it. See Texas Workers' Compensation Commission Order No. 00020, decided March 29, 2000, and decisions cited in that order.

Pursuant to Section 410.202, an appeal must be filed within 15 days after 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 appeal to have been timely filed or mailed by the carrier was Wednesday, June 21, 2000. The carrier's certificate of service reflects service on the claimant's attorney on June 22, 2000; the cover letter with the carrier's appeal is dated June 22, 2000; and the envelope which contained the carrier's appeal bears a postage meter date of June 22, 2000, one day after the 15-day period specified in Rule 143.3(c). The carrier's appeal is, therefore, untimely.

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

Philip F. O'Neill
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Judy L. Stephens
Appeals Judge