

## APPEAL NO. 001469

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 appellant (claimant) reached maximum medical improvement (MMI) on June 3, 1999, as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). Claimant requests that the hearing officer's decision be reversed and that a decision be rendered that he reached MMI on November 18, 1999, as certified by his treating doctor. No response was received from carrier.

### DECISION

Determining that claimant's request for appeal was not timely filed with the Commission and that the jurisdiction of the Appeals Panel has not been properly invoked, the decision of the hearing officer has become final pursuant to 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 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 it was mailed.

Records of the Commission reflect that the hearing officer's decision was mailed to claimant on May 31, 2000, with a cover letter of the same date, and that the hearing officer's decision was mailed to claimant at the same address as is shown as the return address on the envelope in which he mailed his appeal. The deemed date of receipt of the hearing officer's decision under Rule 102.5(d) was Monday, June 5, 2000. Claimant states that he received the hearing officer's decision on June 9, 2000. The Appeals Panel has previously held that when Commission records show distribution on a particular day to a claimant's correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 982315, decided November 6, 1998. The 15th day after the deemed date of receipt was Tuesday, June 20, 2000. Claimant's appeal is dated June 23, 2000, and the USPS adhesive sticker on the envelope in which claimant's appeal was mailed shows postage paid on June 23, 2000. Since claimant's appeal was mailed after June 20, 2000, it was not timely filed. Section 410.169 provides that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

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

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Robert W. Potts  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Judy L. Stephens  
Appeals Judge