

APPEAL NO. 001574

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This is an appeal of a contested case hearing (CCH) on remand held on April 25, 2000, and May 23, 2000 in (city 1). The original CCH was held on November 29, 1999, with (Hearing Officer 1). The hearing officer determined that the appellant's (claimant) right carpal tunnel syndrome was a result of his compensable injury of _____, but that the claimant did not have disability. The claimant appealed the disability determination and the Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 000006, decided February 14, 2000, reversed the finding of no disability and remanded for the hearing officer to make further findings of underlying facts that explain why the claimant does or does not have disability. However, effective January 31, 2000, Hearing Officer 1 resigned his position as a hearing officer and the CCH on remand was, thus, conducted in city 1, Texas, with (Hearing Officer 2) presiding as hearing officer. He determined that the claimant's unemployment from May 17, 1999, to the present (apparently meaning the date of the CCH on remand) is the result of his disagreement with his brother over his supervisory position with the employer and does not result from his right-hand injury of _____, and that the claimant, thus, does not have disability. The claimant appeals, disagreeing with each of the 14 findings of fact and disputing the resulting conclusion as to disability. The claimant contends that the hearing officer admitted irrelevant evidence, that the fact that the employer was owned and operated by his brother has nothing to do with his claim, that his brother did not inform him for some time that the employer had workers' compensation coverage, and that his medical evidence shows that he has disability. The respondent (carrier) replies that the claimant's appeal is untimely and without merit.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)), an appeal, to be timely, must be filed or mailed not later than the 15th day after the date of receipt of the hearing officer's decision. Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on June 15, 2000, under a cover letter of the same date. The claimant states in his appeal that he received the hearing officer's decision at his address in California on June 22, 2000. Under Rule 102.5(d), as amended effective August 29, 1999, unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed or, in this case, on June 20, 2000.

The claimant had 15 days, or until July 5, 2000, based on the deemed date of receipt, to mail or fax his request for review to the Commission. While Rule 143.3(c) provides that an appeal mailed by the 15th day after receipt of the hearing officer's

decision and received by the 20th day is presumed to be timely, thus allowing for time for the mail to reach the Commission, the rule does not allow extra time for a facsimile copy of an appeal to reach the Commission, since it arrives on the same day it is sent. The claimant's appeal was faxed to the Commission on July 10, 2000, and is, thus, untimely because it was faxed after the 15-day deadline.¹

We note that the claimant states that the hearing officer's order means that the claimant will never be able to collect temporary income benefits for past disability status, present disability status, or any possible future disability status. The Appeals Panel has held that a claimant may go into and out of disability. Thus, any future disability of the claimant could be the subject of a future dispute resolution process.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer have become final under Section 410.169.

Alan C. Ernst
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge

¹We observe that the claimant's appeal would still be untimely if the 15 days to file an appeal were calculated from the date he said he received the decision and order.