

APPEAL NO. 001646

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 of compensable injury and disability by deciding that appellant (claimant) failed to appear at the CCH and failed to respond to a "10-day letter" and is not entitled to workers' compensation benefits. Claimant appeals the hearing officer's decision. Respondent (carrier) requests that the hearing officer's decision be affirmed.

DECISION

Determining that claimant's request for appeal was not timely filed with the Texas Workers' Compensation Commission (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 June 16, 2000, with a cover letter of the same date, and that the hearing officer's decision was mailed to claimant at the claimant's address that is on file with the Commission, which is the same address to which claimant's attorney sent the claimant's copy of the request for appeal. The deemed date of receipt of the hearing officer's decision under Rule 102.5(d) was Wednesday, June 21, 2000. There is no indication in the Commission's file that the copy of the hearing officer's decision that was mailed to claimant was returned to the Commission. Claimant's attorney states in claimant's appeal that claimant received the hearing officer's decision on July 3, 2000. No reason is stated for a two-week delay in receiving the decision. The Appeals Panel has 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 Thursday, July 6, 2000. A facsimile copy of claimant's request for appeal was received by the Commission on July 18, 2000. A copy of claimant's request for appeal was also mailed to the Commission on July 18, 2000 (based on the USPS postmark on the envelope containing the appeal), and that copy was received by the Commission on July 21, 2000. We conclude that claimant's request for appeal was not timely filed with the Commission because it was not filed or mailed by July 6, 2000.

Claimant's attorney states in the request for appeal that he did not receive a copy of the hearing officer's decision until July 11, 2000, because the Commission had incorrectly sent his copy to another attorney. The Appeals Panel has held that the operative date for determining the timeliness of an appeal is the date the party received the hearing officer's decision, and is not the date the party's attorney received the decision. Texas Workers' Compensation Commission Appeal No. 92219, decided July 15, 1992.

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.

Robert W. Potts
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Gary L. Kilgore
Appeals Judge