

APPEAL NO. 001690

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 June 14, 2000. The issues at the CCH were injury, disability, and election of remedies. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that she therefore did not have disability; and that she was not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy. The claimant appeals the hearing officer's determinations on the injury issue, contending that these determinations are against the great weight and preponderance of the evidence. The respondent (carrier) responds that the claimant's request for review is untimely and should be dismissed for want of jurisdiction or, in the alternative, that the challenged determinations are not against the great weight and preponderance of the evidence and should 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.

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 27, 2000, under a cover letter of the same date.

The claimant does not state in her appeal when she received the hearing officer's decision. 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. We note that the address to which the hearing officer's decision was sent is the same address given by the claimant on the appearance sheet for the CCH. The claimant gives no explanation indicating a reason for receiving the hearing officer's decision later than the five-day deemed receipt date. We deem the claimant to have received the hearing officer's decision on July 2, 2000, five days after it was mailed.

The claimant had 15 days from July 2, 2000, or until July 17, 2000, a Monday, to mail her request for review to the Commission. The claimant's certificate of service recites service on the carrier's attorney on July 20, 2000; the cover letter with the appeal is dated July 20, 2000; and the envelope in which the appeal was received is postmarked July 20, 2000. The claimant's appeal is untimely, having been mailed after the 15-day deadline.

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.

Kathleen C. Decker
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

CONCURRING OPINION:

I concur for the reason that the claimant did not file her appeal within 15 days of Monday, July 3, 2000. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the Appeals Panel must determine whether the great weight of the evidence is against the deemed date of receipt. I note that July 2, 2000, is a date when regular U.S. mail is not delivered, and the decision could not have been received by the claimant.

Susan M. Kelley
Appeals Judge