

APPEAL NO. 001693

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 25, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury and did not have disability. The claimant appealed these adverse determinations on grounds of sufficiency of the evidence requesting that the Appeals Panel reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) replied that the claimant's appeal may be untimely and that the hearing officer's decision was correct and should be sustained in all respects.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Sections 410.169 and 410.202.

Records of the Texas Workers' Compensation Commission (Commission) reflect that the decision of the hearing officer was distributed to the parties on June 26, 2000, under a cover letter of the same date. The claimant indicates in his appeal that he received the hearing officer's decision on July 30, 2000, which we believe is a typographical error as the appeal was received by the Commission's Chief Clerk of Proceedings on July 24, 2000. We believe the claimant was referring to the date of June 30, 2000, rather than July 30, 2000. However, since we cannot make this determination based on speculation, we apply the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), which provides:

- (d) For purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed[.]

In that the decision was distributed on June 26, 2000, the "deemed" date of receipt is July 1, 2000.

Section 410.202(a) provides that an appeal shall be filed with the Appeals Panel "not later than the 15th day after the date on which the decision of the hearing officer is received. . . ." 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 (emphasis added) it is received by the Commission not later than the 20th day after receipt of the hearing officer's decision.

If the deemed receipt date is July 1, 2000, then 15 days from that date would be July 16, 2000, which would be the statutory date by which an appeal must be filed. The statutory date of July 16, 2000, is a Sunday. Rule 102.3(a)(3) provides that if the last day

of any period is not a working day, the period is extended to include the next day that is a working day. Therefore, under the provisions of Rule 102.3(a)(3), the last day for the claimant to mail his appeal would be Monday, July 17, 2000. The claimant's certificate of service reflects that Mr. G, the claimant's representative, mailed the appeal on July 15, 2000. The envelope containing the appeal contains the postage meter date of July 14, 2000, and a United States Postal Service file stamp possibly showing a date of July 19, 2000.

If the appeal was mailed on July 19, 2000, the appeal is untimely because it was not mailed within 15 days of the statutory "deemed" date of receipt of July 1, 2000. If the appeal was mailed on either July 14, 2000, or July 15, 2000, the appeal is untimely because the Commission did not receive the appeal until July 24, 2000, more than 20 days after the hearing officer's decision was deemed received on July 1, 2000. Even if the claimant had received the hearing officer's decision on the speculative date of June 30, 2000, rather than the July 30, 2000, date contained in the statement of jurisdiction, the appeal would be untimely as all the dates would be moved forward by one day. Therefore, the claimant's appeal is untimely under the requirements of Rule 143.3(c).

Because the claimant's appeal was not filed on time, 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:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge