

APPEAL NO. 001921

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 June 27, 2000. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that the date of the alleged injury was \_\_\_\_\_; and that the claimant did not have disability as a result of an alleged compensable injury sustained on \_\_\_\_\_. The claimant appealed, arguing, in effect, that the hearing officer's determinations were against the great weight and preponderance of the evidence. The respondent (carrier) replied that the hearing officer's decision was sufficiently supported by 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.

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was distributed to the claimant on July 26, 2000, under a cover letter of the same date. Although Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), as amended effective August 29, 1999, provides for a deemed date of receipt five days after the date of mailing, a signed acknowledgment of an earlier date of receipt prevails over the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 950972, decided August 7, 1995. The claimant states in his appeal that he received the hearing officer's decision on July 28, 2000.

Pursuant to Section 410.202(a) 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. Rule 143.3(c) provides that a request for appeal shall be presumed to be timely filed if it was: 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.

The claimant had 15 days from July 28, 2000, or until Monday, August 14, 2000, to mail his request for review to the Commission since the 15th day fell on a Saturday. Rule 102.3(a)(3). Although the claimant's unsigned certificate of service indicates service on the carrier's attorney on August 10, 2000, and the claimant's cover letter bears the same date, the envelope which contained the claimant's appeal bears a postage meter date and a postmark of August 15, 2000. The claimant's appeal was not received by the Commission until August 18, 2000, when receipt was required no later than August 17, 2000. The claimant's review was thus not timely filed.

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.

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Kathleen C. Decker  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge