

APPEAL NO. 001991

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 July 27, 2000. The issues at the CCH were injury and disability. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on _____, and, therefore, did not have disability. The claimant appeals, disputing the determinations of the hearing officer. The appeal file contains no response from the respondent (carrier).

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 August 2, 2000, under a cover letter of the same date.

Under Rule 102.5(a), as amended effective August 29, 1999, all communications sent to a claimant will be sent to the most recent address or facsimile number supplied on certain employer or carrier forms or pursuant to any verbal or written communication from the claimant. Rule 102.5(d), as amended effective August 29, 1999, provides that, 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. The Appeals Panel has held that, where Commission records show mailing on a particular day to the address confirmed by the claimant as being correct, a mere statement that the decision was not received until a later date is not necessarily sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998. The claimant states in her appeal that she received the hearing officer's decision on August 11, 2000, nine days after it was mailed.

The claimant's copy of the hearing officer's decision was mailed to (address). This is the same address as that used by the claimant when she signed in at the CCH (except that the last four digits of the ZIP code were omitted). The return address on the USPS label attached to the express mail envelope in which the claimant's appeal was mailed shows the claimant's address as (address). The city and ZIP code are illegible but the USPS adhesive sticker on the envelope shows the postage as paid in Dallas. The Commission's computer records still list the claimant's address as that to which the hearing officer's decision was mailed. It thus appears that, if the claimant's address has changed, there is no evidence that she notified the Commission of that change of address. We

deem the claimant to have received the hearing officer's decision on Monday, August 7, 2000, in accordance with Rule 102.5(d). See Texas Workers' Compensation Commission Appeal No. 94017, decided February 16, 1994.

Rule 143.3(c), provides that a request for review is presumed to have been timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and is received by the Commission not later than the 20th day after the date the hearing officer's decision is received. The last day for the claimant's appeal to have been timely mailed was Tuesday, August 22, 2000. The claimant's certificate of service is undated. The USPS adhesive sticker on the envelope in which the claimant's appeal was mailed indicates postage was paid on August 23, 2000. The claimant's appeal is untimely, being mailed after August 22, 2000.

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.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge