

APPEAL NO. 002018

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 10, 2000. With regard to the only issue before her, the hearing officer determined that the appellant's (claimant) compensable (right knee) injury does not extend to include aggravation of the preexisting osteoarthritis in the left knee.

The claimant appealed, asserting that her compensable right knee injury aggravated her preexisting left knee condition, citing reports from her treating doctor. The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The respondent (carrier) responds, urging affirmance.

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 mailed to the claimant on July 21, 2000, under a cover letter of the same date. The claimant, in her appeal, states that she received the hearing officer's decision and order on July 25, 2000.

Section 410.202(a) provides that a request for review shall be filed not later than the 15th day after the date on which the hearing officer's decision is received. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (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 Wednesday, August 9, 2000. Although the claimant's appeal includes a certified receipt showing a date of mailing as August 9, 2000, there is no evidence that the appeal was mailed to the Commission. In fact, a note attached to the appeal indicates that the appeal was "mailed . . . to the wrong address." The claimant's appeal to the Commission is postmarked August 25, 2000, and was received on September 1, 2000. The claimant's appeal, having been mailed after August 9, 2000, and having been received after August 14, 2000, was not timely filed.

The claimant's appeal being untimely, the decision of the hearing officer has become final. Section 410.169.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge