

APPEAL NO. 002208

On July 12, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) current torn meniscus in his left knee and current back problem are not a direct and natural result of the claimant's compensable injury of _____; that the employer tendered a bona fide offer of employment to the claimant; and that the claimant had disability from February 18, 1999, through May 12, 1999, and from May 14, 1999, through October 30, 1999. The claimant appeals the hearing officer's decision that his current torn meniscus in his left knee and his current back problem are not a direct and natural result of his compensable injury and that the employer tendered a bona fide offer of employment to the claimant. The respondent (carrier) requests affirmance.

DECISION

The hearing officer's decision has become final under Section 410.169 because the claimant's appeal was not timely filed with the Texas Workers' Compensation Commission (Commission).

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, 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." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for appeal shall be presumed to be timely filed if it is: (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. Under Rule 102.5(d), as amended, unless the great weight of the evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after the date it was mailed.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant at the claimant's correct address on August 30, 2000, with a cover letter of the same date. The deemed date of receipt of the hearing officer's decision under Rule 102.5(d) was Monday, September 4, 2000. The claimant states that he received a copy of the hearing officer's decision on September 5, 2000. The Appeals Panel has previously held that when Commission records show distribution on a particular day to a claimant's correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 982315, decided November 6, 1998. The 15th day after the deemed date of receipt was Tuesday, September 19, 2000. The claimant's appeal is dated September 20, 2000, and the postage meter stamp on the envelope in which the appeal was mailed is dated September 20, 2000. The claimant's appeal was received by the Commission on September 22, 2000. Since the claimant's

appeal was mailed after September 19, 2000, it was not timely filed. Section 410.169 provides that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

The hearing officer's decision and order have become final under Section 410.169.

Robert W. Potts
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Philip F. O'Neill
Appeals Judge