

APPEAL NO. 002243

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 August 15, 2000. The issues at the CCH were injury and disability. The hearing officer determined that the respondent (claimant) did sustain a compensable neck and right shoulder injury on \_\_\_\_\_, and has disability beginning June 24, 1999, and continuing through the date of the CCH. The appellant (carrier) appeals, contending that the claimant did not prove the causal connection between the \_\_\_\_\_, accident and his right rotator cuff injury, and asking that the Appeals Panel reverse the hearing officer's decision and remand for the submission of medical evidence on the extent of injury. The appeal file contains no response from the claimant.

DECISION

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

The carrier's attorney writes in a letter dated September 22, 2000, received by the Texas Workers' Compensation Commission's (Commission) chief clerk of proceedings on September 26, 2000, with a copy of the carrier's appeal, that the carrier's appeal was previously mailed on September 12, 2000, but was returned as undeliverable. The letter further indicates that the envelope was addressed from an outdated list, unknown to the attorney's temporary secretary. The enclosed photocopy of the envelope shows a postage meter or postmark date of September 13, 2000, is addressed to the former address of the Commission's Austin Field Office on N. Lamar Blvd., has the address marked through, is marked return to sender, and bears the notation "MOVED UNDELIVERABLE AS ADDRESSED." This address to which the appeal is addressed is for a location from which the Commission's Austin Field Office moved some time ago. We note that the address to which the appeal was sent is not the address shown for filing of appeals on the cover letter of the hearing officer's decision. While the Appeals Panel has held that an appeal may be sent to a Commission field office, we have indicated that a party takes a chance by so doing that the appeal may not reach the Appeals Panel within the 30-day time period for issuing a decision set by Section 410.204. The carrier's attorney and his employees are the agents of the carrier and the carrier is responsible for the acts of its attorney. The mistake of the carrier's attorney's temporary secretary in sending the appeal to an incorrect address is therefore attributable to the carrier.

The carrier's Austin agent signed for the hearing officer's decision on August 30, 2000. Pursuant to Section 410.202 an appeal must be filed within 15 days after receipt of the hearing officer's decision. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (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 received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order

for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994. The last day for the carrier to timely file an appeal would have been Thursday, September 14, 2000, and the last day for the appeal to have been timely received by the Commission was Tuesday, September 19, 2000. Even using the first mailing date to the incorrect address, the appeal was received by the Commission on September 26, 2000, seven days after the 20-day deadline. The carrier's appeal is therefore untimely.

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

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Robert E. Lang  
Appeals Panel  
Manager/Judge

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Philip F. O'Neill  
Appeals Judge