

APPEAL NO. 002268

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 September 8, 2000. The issues at the CCH were injury and disability. The hearing officer determined that the respondent (claimant) sustained a compensable inguinal hernia injury on _____; and that the claimant has had disability from April 12, 2000, through the date of the CCH. The appellant (carrier) appeals, contending that the hearing officer erred as a matter of law in finding that the claimant was injured in the course and scope of employment on _____, and that the claimant had disability. 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 Texas Workers' Compensation Commission's (Commission) cover letter attached to the hearing officer's decision of September 11, 2000, is dated September 13, 2000. The carrier states in its appeal that it received a copy of the hearing officer's decision on September 14, 2000. However, the records of the Commission show that the decision of the hearing officer was signed for by the carrier's Austin representative on September 13, 2000. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 156.1(a) (Rule 156.1(a)), each carrier shall designate an Austin representative to act as agent for receiving notice from the Commission, and, under Rule 156.1(c), notice to the carrier's Austin representative is notice from the Commission to the carrier. Therefore, the carrier received the decision of the hearing officer on September 13, 2000, when its Austin representative received it. Rule 102.5(d), as amended effective August 29, 1999, provides that, unless the great weight of evidence indicates otherwise, a written communication from the Commission to the carrier is deemed to have been received the first working day after the date the written communication was placed in the carrier's Austin representative's box as indicated by the Commission date stamp.

Pursuant to Section 410.202, and Rule 143.3(a) an appeal must be filed within 15 days after receipt of the hearing officer's decision. 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 receipt of the hearing officer's decision. The last day for the appeal to have been timely filed or mailed by the carrier was Thursday, September 28, 2000. The carrier's certificate of service reflects service on the claimant on September 29, 2000; the carrier's cover letter is dated September 29, 2000; and the carrier's appeal was hand-delivered to the Commission on September 29, 2000, one day after the 15-day period specified in Section 410.202. The carrier's appeal is therefore untimely. See Texas Workers' Compensation Commission Appeal No. 000968, decided June 20, 2000.

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

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge