

APPEAL NO. 002308

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, disability, and whether the respondent (carrier) contested compensability in accordance with Section 409.021 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6 (Rule 124.6.) The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and, therefore, had no disability, and that the carrier contested compensability in accordance with Section 409.021 and Rule 124.6. The claimant appeals the hearing officer's findings of no compensable injury and urges the application of Downs v. Continental Casualty Company, No. 04-99-00111-CV (Tex. App.-San Antonio, January 26, 2000). The 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 distributed to the claimant on September 8, 2000, under a cover letter of the same date. The claimant's appeal states that he received the hearing officer's decision on September 13, 2000. Pursuant to Section 410.202, an appeal must be filed within 15 days of 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. 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 claimant to file a timely appeal would have been Thursday, September 28, 2000, and the last day for the appeal to have been timely received by the Commission was Tuesday, October 3, 2000. Although the claimant's appeal recites service on the carrier's attorney on September 28, 2000, the cover letter with the appeal is dated September 28, 2000; the envelope which contained the appeal is metered September 28, 2000; and the envelope is postmarked September 29, 2000. The envelope, the cover letter, and the appeal are stamped as received by the Commission on October 4, 2000. The appeal was mailed one day after the 15-day deadline (September 28, 2000) set by Rule 143.3(c) and was received one day after the 20-day deadline (October 3, 2000) set by that rule. The claimant's appeal is therefore untimely.

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Philip F. O'Neill
Appeals Judge