

APPEAL NO. 002318

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 20, 2000. With regard to the issues before her, the hearing officer determined that the appellant/cross-respondent (claimant) had not sustained a compensable (neck) injury on _____, and that the claimant did not have disability.

The claimant appealed, citing his testimony and certain medical evidence, and contending that he had sustained an injury and had disability. The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent/cross-appellant (carrier) filed a contingent appeal, conditioned on the claimant "filing a Request for Review appealing the Decision and Order as a whole" regarding some of the findings of fact.

DECISION

The claimant's appeal not having been timely filed, the carrier's contingent appeal is withdrawn and the decision and order of the hearing officer have become final pursuant to Section 410.169.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 hearing officer's decision was mailed to the claimant, at the address shown on the claimant's appeal, on September 27, 2000, under a cover letter of the same date. The claimant's appeal recites that he received the hearing officer's decision and order "on 10-23-00." The claimant's representation notwithstanding, pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), as amended August 29, 1999, unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed, or in this case, on Monday, October 2, 2000. The claimant offers no explanation why he did not receive the hearing officer's decision until October 23, 2000, some three weeks after the deemed receipt date.

Section 410.202(a) provides that a request for appeal shall be filed not later than the 15th day after the date on which the hearing officer's decision is received. Rule 143.3(c) provides that a request for appeal 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 October 17, 2000. The envelope which contained the claimant's appeal shows a postmark which we interpret to show a November 6, 2000, date of mailing received by the Commission on November 9, 2000. The claimant's appeal is over three weeks after the 15-day deadline specified in Rule 143.3(c) and Section 410.202(a). The claimant's appeal is therefore untimely.

The carrier's contingent appeal is conditioned upon the claimant filing "a Request for Review appealing the Decision and Order as a whole." Although the carrier's contingent appeal does not specifically so state, we interpret the carrier to mean to say that its contingent appeal was conditioned upon the claimant timely filing a request for review. In that the claimant's appeal was not timely, we grant the carrier's request to automatically withdraw its appeal in that the claimant did not timely file an appeal.

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge