

APPEAL NO. 002320

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 22, 2000. The issues at the CCH were injury and disability. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability resulting from that injury. The claimant appeals, and we interpret his appeal as contending that the determinations of the hearing officer are against the great weight and preponderance of the evidence. The appeal file contains no response from the respondent (carrier).

DECISION

A timely appeal not having been filed, the decision and the 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 on September 7, 2000, under a cover letter of the same date. The address to which the decision of the hearing officer was mailed is the same address as that to which the claimant's attorney mailed the claimant's copy of the appeal. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), as amended effective 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. The claimant does not state in his appeal when he received the hearing officer's decision. We deem that he received it on September 12, 2000, five days after it was mailed.

Pursuant to Section 410.202(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 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 timely file an appeal was Wednesday, September 27, 2000. The claimant's certificate of service recites service to all counsel of record on September 26, 2000, and the cover letter with the appeal is dated September 26, 2000. The envelope in which the claimant's appeal was mailed to the Commission has two postage meter labels, one dated October 2, 2000, applied directly over one dated September 26, 2000. The envelope has a notation on it which has been "whited out" but is still visible when held up to the light. The notation indicates that the letter was returned for further postage. It thus appears that the claimant's appeal was first mailed on September 26, 2000, was returned for further postage, and was remailed on October 2, 2000. The problem with insufficient postage is the responsibility of the

claimant's attorney and, in turn, that of the claimant. Texas Workers' Compensation Commission Appeal No. 971877, decided October 10, 1997, citing Ward v. Charter Oak Fire Insurance Company, 579 S.W.2d 909 (Tex. 1979). The claimant's appeal, having ultimately been mailed on October 2, 2000, was mailed after the 15-day deadline set by Rule 143.3(c). Even had we applied the first mailing date, the appeal was received by the Commission after the 20-day deadline set by Rule 143.3(c). That deadline was Monday, October 2, 2000, and the cover letter and the envelope are stamped to show receipt by the Commission's Chief Clerk of Proceedings on Thursday October 5, 2000. The claimant's appeal is untimely.

The claimant's appeal being untimely, the decision and the order of the hearing officer have become final. Section 410.169.

Tommy W. Lueders
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge