

## APPEAL NO. 002342

In Texas Workers' Compensation Commission Appeal No. 001104, decided June 21, 2000, the Appeals Panel affirmed the decision of the hearing officer, that the appellant's (claimant) compensable injury of \_\_\_\_\_, does not extend to his cervical spine. However, because the parties had stipulated that the claimant did sustain a compensable injury to his right hand, we reversed the hearing officer's determination that the claimant did not have disability and remanded for reconsideration of that issue in terms of disability from the injured right hand. Pursuant to the hearing officer's order of July 6, 2000, a remand hearing scheduled to be held on August 3, 2000, was canceled since no new evidence was to be submitted and the parties were given the opportunity to submit briefs of their respective positions on the remand issue. The hearing officer signed a Decision and Order on August 30, 2000, which found that the claimant did not lose any time from work due to the compensable right hand injury and which concluded that he did not have any disability as a result of the \_\_\_\_\_, injury. The claimant has appealed, asserting that there was no right hand injury but rather a cervical injury and that the time he lost from work was due to the cervical injury. The respondent (carrier) urges the sufficiency of the evidence to support the hearing officer's determination and observes that the determination that the claimant's injury did not extend to the cervical spine was affirmed in our earlier decision.

### DECISION

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

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." *And see* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a) (Rule 143.3(a)). Rule 143.3(c) provides that a request for review shall be presumed to be timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after such receipt.

Records of the Commission show that the hearing officer's remand decision was distributed to the partes on September 7, 2000, with a cover letter of the same date. The cover letter advised the parties of the Commission's address in Austin to which an appeal and response should be mailed. The claimant states in his request for review that he received the decision on September 12, 2000, five days later. The envelope in which the claimant's appeal was mailed reflects that he mailed the appeal on September 26, 2000, one day before the 15-day deadline imposed by Rule 143.3(c) and that the appeal was received by the Commission on October 9, 2000. Since the 20th day following the claimant's receipt of the decision was October 2, 2000, his appeal was not timely filed as

it was not received by the Commission until October 9, 2000. The claimant's envelope reflects that he addressed it to the correct postal service box number but that two of the numbers he wrote for the zip code were erroneous. Since the appeal was not received by the 20th day, it is untimely and the jurisdiction of the Appeals Panel has not been properly invoked.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Tommy W. Lueders  
Appeals Judge

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Robert W. Potts  
Appeals Judge