

APPEAL NO. 002385

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 26, 2000. With regard to the issues before him, the hearing officer determined that the appellant (claimant) had not sustained a compensable (back and right shoulder) injury on _____ (all dates are 2000 unless otherwise noted), and that the claimant did not have disability.

The claimant's "appeal" consists of the filled-out certification portion of the Texas Workers' Compensation Commission (Commission) blue brochure entitled "Review of Claims Disputes by the Commission's Appeals Panel." The certification date is shown as October 7, and the brochure is stamped as received by the Commission's Chief Clerk of Proceedings on October 13. The respondent (carrier) responds to the claimant's "appeal," asserting that it fails to meet the minimum requirements for a request for review and, in the alternative, urges affirmance on the merits.

DECISION

A timely appeal not having been filed by the claimant, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(2) (Rule 143.3(a)(2)) requires that an appeal must "clearly and concisely rebut each issue in the hearing officer's decision that the appellant wants reviewed. . . ." While we have allowed a great deal of latitude as to the meaning of clearly and concisely rebutting, we have also held that a claimant's filing of a signed copy (in the sample certification block) of the blue brochure is inadequate as an appeal because the claimant "did not adequately state the grounds upon which review was requested nor indicate disagreement with any portion of that decision." Texas Workers' Compensation Commission Appeal No. 94973, decided September 1, 1994; Texas Workers' Compensation Commission Appeal No. 000452, decided April 13, 2000.

Section 410.202 and Rule 143.3(c) provide that an appeal, to be timely, must be filed or mailed not later than the 15th day after the date of receipt of the hearing officer's decision. Records of the Commission show that the hearing officer's decision was mailed to the claimant on September 29, with a cover letter of the same date. Under Rule 102.5(a), as amended effective August 29, 1999, all notices and written communications to the claimant or the claimant's representative will be mailed to the most recent address on certain documents. Rule 102.5(d), as amended August 29, 1999, provides that, unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the decision and order of the hearing officer five days after it was mailed. Under Rule 102.5(d) and Rule 102.3(a)(3), the claimant is deemed to have received the hearing officer's decision on Wednesday, October 4. The claimant had 15 days or until Thursday, October 19 to mail her request for review to the Commission.

The claimant's filing of the blue brochure being insufficient to constitute an appeal, the jurisdiction of the Appeals Panel was not properly invoked. The claimant having not filed a timely appeal, the decision and order of the hearing officer have become final under Section 410.169.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge