

APPEAL NO. 002473

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 September 6, 2000. The issues at the CCH were injury, date of injury, and disability. The hearing officer determined that the appellant (claimant) did not sustain an injury in the course and scope of his employment; that the date of the alleged injury is _____; and that the claimant does not have disability. The claimant appeals, contending that he was actually injured on _____, was injured on the job, and had disability. The claimant also contends that the hearing officer unfairly took into consideration his past criminal history. The claimant asks that the Appeals Panel reverse the hearing officer's decision. The respondent (carrier) responds that the hearing officer's decision is not against the great weight and preponderance of the evidence and that the claimant's past criminal history was properly considered in weighing the claimant's credibility.

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 27, 2000, under a cover letter of the same date. The claimant's appeal states that he received the hearing officer's decision on October 1, 2000. Under Section 410.202, an appeal, to be timely, must be filed or mailed within 15 days of receipt of the hearing officer's decision. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (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. The last day for the claimant to file a timely appeal was Monday, October 16, 2000. The claimant's certificate of service recites service on the carrier's attorney on October 12, 2000, and the envelope in which the claimant's appeal was first mailed shows a postage meter date of October 12, 2000, and a postmark date of October 12, 2000. However, that envelope is stamped to show it as returned for additional postage and the envelope shows an additional postage meter date of October 18, 2000. When a party's appeal is returned for insufficient postage and is remailed to the Commission, the Appeals Panel uses the postmark on the remailing to determine if the appeal is timely. Texas Workers' Compensation Commission Order No. 97038, issued October 21, 1997. The claimant's appeal having been remailed with sufficient postage two days after the 15-day deadline, the claimant's appeal is untimely.

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

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge