

APPEAL NO. 002478

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On September 26, 2000, a hearing was held. The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) compensable injury of _____, extends to and includes an injury to the left foot, in addition to the right foot. The appellant (carrier) appealed. No response was received from the claimant.

DECISION

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

The Texas Workers' Compensation Commission's (Commission) cover letter attached to the hearing officer's decision is dated October 4, 2000. The carrier's attorney states in the appeal that he received the hearing officer's decision on October 9, 2000. The Appeals Panel has held that with regard to calculating the time period for an appeal, it is receipt by the party, not receipt by the attorney, that controls. Texas Workers' Compensation Commission Appeal No. 92219, decided July 15, 1992. Records of the Commission show that the hearing officer's decision was signed for by the carrier's Austin representative on October 4, 2000. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 156.1(a) (Rule 156.1(a)) each carrier shall designate an Austin representative to act as agent for receiving notice from the Commission, and, pursuant to Rule 156.1(c), notice to the carrier's Austin representative is notice from the Commission to the carrier. Therefore, the carrier received the hearing officer's decision on October 4, 2000, when its Austin representative received it. Rule 102.5(d), as amended effective August 29, 1999, provides that, unless the great weight of evidence indicates otherwise, a written communication from the Commission to the carrier is deemed to have been received the first working day after the date the written communication was placed in the carrier's Austin representative's box as indicated by the Commission date stamp.

Pursuant to Section 410.202 and Rule 143.3(a)(3) 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 be timely filed if it is mailed not later than 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 receipt of the hearing officer's decision. The last day for the appeal to have been timely filed or mailed by the carrier was Thursday, October 19, 2000. The carrier's appeal is dated October 24, 2000, and was sent by facsimile transmission to the Commission on that day. It was also mailed to the Commission on October 24, 2000. The facsimile transmission of the appeal was received by the Commission on October 24, 2000, and the mailed appeal was received by the Commission on October 27, 2000. The carrier's appeal is untimely.

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

Robert W. Potts
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Gary L. Kilgore
Appeals Judge