

APPEAL NO. 002528

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 18, 2000. With regard to the issues before her, the hearing officer determined that the claimed injury arose out of voluntary participation in an off-duty recreational activity which was not part of the appellant's (claimant) work-related activities and the respondent (carrier) is therefore relieved of liability and that the claimant had no disability resulting from the injury sustained _____. The claimant appeals, noting that his attorney did not receive a copy of the hearing officer's decision until October 16, 2000. The claimant contends that the purpose of the trip on which he was injured was to reward the employees, build their teamwork, and improve their performance, thus being in furtherance of the employer's business. The claimant contends that he sustained disability as a result of his injury. The carrier responds that the claimant's appeal is untimely and, in the alternative, that the determinations of the hearing officer are correct and supported by the evidence.

DECISION

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

Pursuant to Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)), 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 Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on September 21, 2000, under a cover letter of the same date. The claimant's copy of the hearing officer's decision was mailed to the same address given by the claimant on the sign-in sheet for the CCH.

Under Rule 102.5(a), as amended effective August 29, 1999, all communications sent to a claimant will be sent to the most recent address or facsimile number supplied on certain employer or carrier forms or pursuant to any communication from the claimant. Rule 102.5(d), as amended effective August 29, 1999, provides that, 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. The Appeals Panel has held that the time for filing a request for review begins to run on the date the party, not counsel for the party, received the decision. Texas Workers' Compensation Commission Appeal No. 992688, decided January 6, 2000, and cases cited in that decision. We deem the claimant to have received the hearing officer's decision on Tuesday, September 26, 2000, five days after it was mailed.

Rule 143.3(c) provides that a request for review is presumed to have been timely filed if it is mailed on or before 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 the date the hearing officer's decision is received. The last day for the claimant's appeal to have been timely mailed was Wednesday, October 11, 2000, and received by the Commission Monday, October 16, 2000. The claimant's certificate of service indicates service on the carrier's attorney on October 31, 2000; a facsimile copy of the claimant's appeal was sent to and received by the Commission on October 31, 2000; and a copy of the appeal was mailed to the Commission on October 31, 2000, and was received by the Commission on November 7, 2000. (We note that the appeal was mailed to the Commission's previous post office box. The Commission presently has a post office box at a different branch post office and the new address was given in the cover letter that went with the hearing officer's decision.) The claimant's appeal is untimely, having been filed or mailed after the 15-day period set by Rule 143.3(c).

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer have become final under Section 410.169.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Susan M. Kelley
Appeals Judge