

APPEAL NO. 002530

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 July 11 and September 26, 2000. The issue at the CCH was whether the appellant's (claimant) compensable injury includes or extends to include an injury to the lumbar area. The hearing officer determined that the claimant's compensable injury does not include or extend to include an injury to the lumbar area. The claimant appeals, contesting 10 findings of fact and the resulting conclusion of law as being against the great weight and preponderance of the evidence. The respondent (carrier) responds that the hearing officer is the sole judge of the credibility of the evidence and resolves conflicts in the evidence; that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust; and that the resulting conclusion of law is clearly 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.

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was distributed to the claimant on October 10, 2000, under a cover letter of the same date. The claimant's appeal states that he received the hearing officer's decision on October 16, 2000.

Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(a)(Rule 102.5(a)), as amended effective August 29, 1999, all written communications to a claimant will be sent to the most recent address supplied by the claimant or from other specified sources. Under Rule 102.5(d), as amended effective August 29, 1999, 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, or on October 15, 2000. Under the previous version of this rule, the Appeals Panel held that, where Commission records show mailing on a particular day to the address confirmed by the claimant as being correct, a mere statement that the decision was not received until a later date is not necessarily sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998. We note that the address to which the claimant's copy of the hearing officer's decision was sent was the same as that to which the notice of the first session of the CCH was sent and is the same address as that to which the claimant's attorney sent the claimant a copy of the claimant's appeal. The decision was not returned to the Commission, nor is there any indication of misdelivery to the wrong address. Under Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on October 15, 2000, five days after it was mailed.

Pursuant to Section 410.202 and 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, or, in this case, not later than Monday, October 30, 2000. The claimant's certificate of service recites service on the carrier's attorney on October 31, 2000, and a facsimile copy of the claimant's appeal was transmitted to the Commission on October 31, 2000. The appeal is untimely, having been transmitted after the 15-day deadline.

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.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge