

APPEAL NO. 002556

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 12, 2000. The issues at the CCH were injury in the course and scope of employment and disability. The hearing officer determined that the appellant (claimant) did sustain a compensable injury on _____, and due to that injury did sustain disability from June 23, 2000, through July 4, 2000. The claimant appeals the disability determination, contending that he also had disability from July 5, 2000, through July 20, 2000. The respondent (self-insured) responds that the hearing officer's disability determination is not so against the great weight and preponderance of the credible evidence as to be manifestly unjust.

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 29, 2000, with a cover letter of the same date. The claimant states in his appeal that he received the hearing officer's decision on October 2, 2000.

Under Section 410.202(a), an appeal, to be timely, must be filed or mailed within 15 days 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. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994.

The last day for the claimant to timely file an appeal would have been Tuesday, October 17, 2000, and the last day for the appeal to have been timely received by the Commission was Monday, October 23, 2000 (the 20th day having fallen on a Sunday, Rule 102.3(a)(3)). The claimant's certificate of service recites service on October 17, 2000, but the Commission received the carrier's response on November 1, 2000, and then contacted the claimant's attorney, who sent a facsimile copy of the claimant's appeal on November 3, 2000. A Dispute Resolution Information System (DRIS) note by Vivian Knobloch, the Hearings Division's Appeals Clerk, describes a conversation with the claimant's attorney's secretary in which the secretary said the claimant's appeal was filed on October 17, was mailed to the old post office box, and was returned for insufficient postage. The DRIS note states that the secretary indicated that "[t]hey have never bothered to re-mail or send a

copy of appeal to start process.” Included with the appeal is a photocopy of both sides of the USPS certified mail receipt stamped to show the item as mailed October 17, 2000, to the Commission. The photocopy does not indicate a date of delivery, name of recipient, or signature. Also included with the appeal was a photocopy of the envelope in which the appeal was first mailed (although the postmark date is illegible except for part of the month of October). The envelope is stamped to show it as refused, returned to sender, and with 21¢ postage due. Three notice dates are shown. The envelope is addressed to the Commission at P. O. Box 17848, Austin, Texas 78760-7848, the post office box formerly rented by the Commission, and the envelope bears a sticker instructing the Commission to “NOTIFY SENDER OF NEW ADDRESS.” The transmittal sheet with the appeal indicates that “[a]dditionally address was incorrect as we did not have notification of change.” However, the cover letter sent to the claimant with the hearing officer’s decision states that all correspondence dealing with the appeal should be addressed to the Appeals Clerk, Hearings; the Commission; Post Office Box 40669; Austin, Texas 78704-0012 (which is located at a different branch post office). When a party’s appeal is returned for insufficient postage and is remailed (or, in this case, a facsimile copy is sent) to the Commission, we use the postmark (or, in this case, the facsimile transmission date) on the remailing or facsimile transmission to determine if the appeal is timely. Texas Workers’ Compensation Commission Order No. 97038, decided October 21, 1997.

A facsimile copy of the claimant’s appeal was sent to and received by the Commission on November 3, 2000. The claimant’s appeal is untimely, having been transmitted to the Commission after the 15-day deadline set by Rule 143.3(c) and having been received by the Commission after the 20-day deadline set by that rule.

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

Philip F. O’Neill
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Judy L. Stephens
Appeals Judge