

APPEAL NO. 002661

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). A contested case hearing was held on August 14, 2000. The record closed on September 26, 2000. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not have disability. In her appeal, the claimant essentially argues those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

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 is presumed to be timely 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 Texas Workers' Compensation Commission (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. Records of the Commission show that the hearing officer's decision was mailed to the claimant on October 19, 2000, under a cover letter of the same date. The claimant states that she received the hearing officer's decision on October 21, 2000. Accordingly, the claimant had 15 days, or until Monday, November 6, 2000, (pursuant to Rule 102.3(a)(3) since the 15th day fell on a Sunday) to mail her request for review to the Commission. The claimant's appeal is postmarked October 30, 2000, thus, the claimant complied with the first requirement. However, the claimant's appeal is not date-stamped as having been received by the Commission until November 16, 2000, well beyond the November 10, 2000, 20-day deadline. Accordingly, the appeal is untimely, having been received by the Commission more than 20 days after the claimant's receipt of the hearing officer's decision.

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.

Elaine M. Chaney
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Robert W. Potts
Appeals Judge