

APPEAL NO. 002672

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 October 10, 2000. The issues at the CCH were injury and disability. The hearing officer determined that on _____, the appellant (claimant) did not sustain a compensable injury and that he had no disability. The claimant appeals, contending that the hearing officer's decision and order are against the great weight and preponderance of the evidence and should be reversed. The respondent (carrier) responds that the claimant failed to set forth which findings of fact and conclusions of law have been appealed and that there is more than sufficient evidence to support the hearing officer's determinations.

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 23, 2000, with a cover letter of the same date. The Commission's cover letter told the claimant to address all correspondence dealing with an appeal to the Commission's Appeals Clerk at P. O Box 40669, Austin, Texas 78704-0012. The new address listed in the Commission's cover letter is at a different branch post office from the old address. The claimant in his appeal indicates that he received the hearing officer's decision on October 26, 2000.

Under Section 410.202(a), an appeal, to be timely, must be filed or mailed within 15 days of the date of receipt 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 the date of 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 Friday, November 10, 2000, and the last day for the appeal to have been timely received by the Commission was Wednesday, November 15, 2000. The claimant's certificate of service is dated November 9, 2000, as is the cover letter with the claimant's appeal. (A corrected certificate of service, mailed separately, is dated November 10, 2000.) The envelope which contained the claimant's appeal is postmarked October 9, 2000.

However, the envelope which contained the claimant's appeal was addressed to the Commission's Appeals Clerk at P. O. Box 17848, Austin, Texas 78760-7848, and has posted on it a USPS sticker instructing the Commission to "NOTIFY SENDER OF NEW

ADDRESS.” The Commission received the claimant’s appeal on November 20, 2000. The claimant’s appeal is untimely, having been received by the Commission after the 20-day deadline set by Rule 143.3(c).

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

Kenneth A. Huchton
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Susan M. Kelley
Appeals Judge