

APPEAL NO. 002691

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 September 7, 2000. The hearing officer resolved the disputed issue by determining that the appellant's (claimant) impairment rating (IR) was 12%. The claimant appealed on the grounds of sufficiency of the evidence urging that the great weight of the other medical evidence was contrary to the report of the designated doctor and that the claimant should be assigned a 30% IR. The respondent (carrier) filed a response, contending that the evidence was sufficient to support the hearing officer's decision and order and that the claimant's appeal was not timely filed. The carrier urged that the hearing officer's decision and order be affirmed.

DECISION

A timely appeal not having been filed with the Texas Workers' Compensation Commission (Commission) and the jurisdiction of the Appeals Panel not having been properly invoked, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) 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 for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994.

Records of the Commission reflect that the hearing officer's decision was distributed to the parties on October 20, 2000, under a cover letter of the same date. Rule 102.5(d), 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. Accordingly, the claimant is deemed to have received the hearing officer's decision on October 25, 2000. The claimant had 15 days after October 25, 2000, to mail his request for review. The postmarked date on the envelope with the claimant's request for review reflects that it was mailed on November 15, 2000, more than 15 days after October 25, 2000, and thus, the claimant has not complied with the first prong of Rule 143.3(c).

The hearing officer's decision and order have become final pursuant to Section 410.169.

Kathleen C. Decker
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Kenneth A. Huchton
Appeals Judge