

APPEAL NO. 002709

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 23, 2000. The issue at the CCH was the appellant's (claimant herein) need for spinal surgery. The hearing officer determined that there was no second concurring opinion for spinal surgery. The claimant appeals, contending Dr. D agreed that the claimant needed spinal surgery. The respondent (carrier herein) replies that the claimant did not timely file a request for review.

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 November 1, 2000, under a cover letter of the same date. The claimant's appeal states that she received the hearing officer's decision on November 3, 2000.

Pursuant to Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (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 and received by the Commission not later than the 20th day after the claimant receives the decision of the hearing officer. In this case this would mean the appeal would have to be mailed or filed by Monday, November 20, 2000, since the 15th day was Saturday, November 18, 2000, extending the claimant's time to file an appeal to the next working day by operation of Rule 102.3(a)(3). The claimant's appeal is postmarked November 21, 2000, and was received by the Commission on November 27, 2000. The appeal is untimely, having been mailed after the 15-day deadline and received after the 20-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:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge