

APPEAL NO. 002713

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 27, 2000. With regard to the only issue before her the hearing officer determined that the deceased was not in the course and scope of his employment when he was fatally injured in a motor vehicle accident on _____.

The appellant claimant/beneficiary (claimant 1) appeals, contending that the deceased was in the course and scope of his employment and requesting that we reverse the hearing officer's decision. The respondent (carrier) responds contending that claimant 1's appeal was not timely and the Appeals Panel has no jurisdiction to consider the appeal.

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 mailed to claimant 1 on October 26, 2000, under a cover letter of the same date. Claimant 1's appeal states that claimant 1's counsel received the hearing officer's decision and order "by facsimile transmission on November 20, 2000." The appeal goes on to state that counsel did not receive the decision by mail and an attachment would indicate that the facsimile transmission was sent to counsel by the Commission on November 20, 2000.

Records of the Commission show that the hearing officer's decision was sent to claimant 1, minor claimant/beneficiary (claimant 2), carrier, carrier's counsel, and counsel for claimant 2. The Appeals Panel has early on held that the time for filing a request for appeal begins to run on the date the party, not counsel for the party, received the decision. Texas Workers' Compensation Commission Appeal No. 92219, decided July 15, 1992; Texas Workers' Compensation Commission Appeal No. 990268, decided March 26, 1999. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.4(a) (Rule 102.4(a)) provides that all written communications to a claimant shall be sent to the most recent address supplied by the claimant. There is no evidence or allegation that claimant 1 was not sent a copy of the hearing officer's decision or that the most recent address to which claimant 1's copy of the hearing officer's decision was sent was incorrect.

Pursuant to Rule 102.5(d), unless the great weight of evidence indicates otherwise, claimant 1 is deemed to have received the hearing officer's decision five days after it was mailed, or in this case on Tuesday, October 31, 2000. Section 410.202(a) provides that a request for appeal shall be filed not later than the 15th day after the date on which the hearing officer's decision is received. Rule 143.3(c) provides that a request for appeal is presumed to have been timely filed if it is mailed on or before the 15th day after the receipt of the hearing officer's decision and is received by the Commission not later than the 20th day after the date the hearing officer's decision is received. The last day for claimant 1's

appeal to have been timely mailed was Wednesday, November 15, 2000, and the last day for claimant 1's appeal to have been timely received by the Commission was Monday, November 20, 2000. The envelope which contained claimant 1's appeal has an undecipherable postage meter date but the transmittal letter is dated November 21, 2000, and was received by the Commission on November 27, 2000. In any event, clearly the appeal was mailed after November 15, 2000, and was not received until seven days after November 20, 2000. Claimant 1's appeal is therefore untimely.

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge