

APPEAL NO. 002743

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On September 20, 2000, a hearing was held. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on or about _____, and that the claimant has not had disability. The claimant appealed and the respondent (carrier) responded.

DECISION

The decision and order of the hearing officer have become final under Section 410.169 because the claimant's appeal was not timely filed with the Texas Workers' Compensation Commission (Commission).

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 Section 143.3(c) (Rule 143.3(c)) provides that a request for appeal 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. Under Rule 102.5(d), as amended, unless the great weight of the evidence indicates otherwise, claimant is deemed to have received the hearing officer's decision five days after the date it was mailed.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on September 27, 2000. The claimant states that she received the hearing officer's decision on October 2, 2000 (the fifth day after mailing). The 15th day after October 2, 2000, was Tuesday, October 17, 2000. The claimant's appeal contains a certificate of service showing service by certified mail on the carrier's attorney on October 17, 2000, and the carrier filed a response on November 3, 2000. However, the only request for appeal in the appeal's file was filed with the Commission by the claimant's attorney by facsimile transmission on November 29, 2000, and is stamped as received by the Commission on November 29, 2000. Since the claimant's appeal was not received by the Commission until November 29, 2000, it was not timely filed. Section 410.169 provides that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

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

Robert W. Potts
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Thomas A. Knapp
Appeals Judge