

APPEAL NO. 002806

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 25, 2000. The hearing officer resolved the disputed issues of injury, disability, and carrier waiver by deciding:

1. The appellant (claimant herein) did not suffer an injury in the course and scope of his employment on _____.
2. The claimant has not suffered disability as a result of the alleged injury.
3. The respondent (carrier herein) did not waive its right to contest compensability.

The claimant filed a request for review and the carrier responded.

DECISION

A timely appeal not having been filed, 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 Texas Workers' Compensation Commission (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. See Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; and Texas Workers' Compensation Commission Appeal No. 941225 decided October 24, 1994.

Records of the Commission reflect that the hearing officer's decision was distributed to the claimant on November 13, 2000, with a cover letter of the same date. The claimant states in his appeal that he received the hearing officer's decision on November 15, 2000. The claimant's certificate of service recites service on the carrier's attorney on November 30, 2000, and the envelope which contained the claimant's appeal bears a postmark date of November 30, 2000, and is stamped as received by the Commission on December 7, 2000. The claimant's appeal was mailed on the 15th day after receipt of the hearing officer's decision. However, the claimant's appeal was received by the Commission more than 20 days after the claimant received the hearing officer's decision because it was sent to a post office box that was no longer in use as of September 1, 2000. Therefore,

claimant's appeal is untimely. 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.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge