

APPEAL NO. 010073

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 December 4, 2000, with the record closing on September 14, 2000. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and had disability as a result.

The appellant (carrier) appeals these determinations, and the claimant asked that the decision be affirmed.

DECISION

Because the appeal was untimely, the decision of the hearing officer has become final.

An appeal must be filed not later than 15 days after the party receives the decision from the Hearings Division of the Texas Workers' Compensation Commission. Section 410.202(a). While the carrier's attorney recites that the decision was received by the carrier on December 22, 2000, the decision was signed for by the carrier's representative on December 21, 2000, and this constitutes notice to the carrier. Section 406.011(a). It is the date of receipt by the party, not the party's attorney, that determines the date an appeal is due.

The appeal was required to be mailed not later than January 5, 2001 (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(3) (Rule 143.3(a)(3)); while the office postal meter mark shows January 4, 2001, the cover letter and certification on the appeal itself are dated January 5, 2001. However, the United States Postal Service postmark on the envelope is January 6, 2001, and this is the date that controls. Texas Workers' Compensation Commission Appeal No. 981793, decided September 15, 1998; Texas

Workers' Compensation Commission Appeal No. 002308, decided November 9, 2000.
The appeal is therefore untimely and the decision of the hearing officer has become final.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge