

## APPEAL NO. 010113

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 December 14, 2000. The issues at the CCH were whether the respondent (claimant) sustained a compensable injury in the form of an occupational disease, the date of such injury, the dates and existence of any period of disability, and whether the appellant (carrier) was relieved from liability due to the claimant's failure to notify the employer of her injury within 30 days. The hearing officer agreed that the claimant sustained an occupational disease with a date of injury of \_\_\_\_\_, and that she had disability beginning on June 9 and continuing through the date of the CCH. The hearing officer held that the carrier was not discharged from liability for the claim.

The carrier expressly appeals the hearing officer's determinations on the existence of the injury and the date of injury, and, in a footnote, opines that a finding in its favor on these appealed issues necessarily renders notice to the employer untimely. There is no response from the claimant.

### 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 (Commission). Section 410.202(a). Parties are generally instructed to file an appeal with the Appeals Clerk in (city 2), Texas. In this case, the appeal was hand-delivered to the city 1 field office of the Commission on January 8, 2001.

While the carrier's attorney recites that the cover letter of the hearing officer's decision and order shows a mailing date to the "Carrier's attorney of December 20, 2000," and that it thus had until January 9, 2001, to appeal because of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(e) (Rule 102.5(e)), the decision was signed for by the carrier's city 2 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 filed not later than January 5, 2001 (Rule 143.3(a)(3)), but was actually delivered to the field office on January 8, 2001. The appeal is therefore untimely and the decision of the hearing officer has become final.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge