

APPEAL NO. 010216

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 28, 2000, a hearing was held. The hearing officer resolved the disputed issue by deciding that the Texas Workers' Compensation Commission (Commission) erred in approving Dr. V as an alternate doctor. The claimant appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision and order have become final under Section 410.169 because the claimant's appeal was not timely filed.

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 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. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002659, decided December 12, 2000.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on January 5, 2001. The claimant states that she received the decision on January 9, 2001. Wednesday, January 24, 2001, was the 15th day after January 9, 2001, and Monday, January 29, 2001, was the 20th day after January 9, 2001. The claimant states in a cover letter to her request for appeal that she mailed her appeal to the Commission on January 18, 2001; that the appeal was returned to her by the United States Postal Service on January 30, 2001, for additional postage; and that she remailed the appeal to the Commission on January 31, 2001. The envelope in which the appeal was originally mailed to the Commission is enclosed with the appeal and it shows a postmark date of January 18, 2001, and a stamp noting that it was returned to the claimant for additional postage. The envelope in which the appeal was remailed to the Commission is postmarked January 31, 2001. The appeal was stamped as having been received by the Commission on February 5, 2001.

When a party's appeal is returned for insufficient postage and is remailed to the Commission, the Appeals Panel uses the postmark on the remailing to determine if the appeal is timely. Appeal No. 002659. The claimant's appeal is untimely having been remailed to the Commission after the 15-day deadline set by Rule 143.3(c) and having been received by the Commission after the 20-day deadline set by that rule.

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

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge