

APPEAL NO. 010323

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 19, 2000. The hearing officer resolved the disputed issues by determining that HF was not the appellant's (claimant) employer on _____; that the claimant had not sustained a compensable injury; that the claimant was not within the extraterritorial jurisdiction of the 1989 Act (Section 406.071); and that the claimant did not have disability.

The claimant appeals the adverse findings and requests reversal. The respondent (carrier) responds, urging affirmance.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was mailed to the claimant on January 8, 2001, under a cover letter of the same date. The claimant, in his appeal, states that he received the hearing officer's decision and order on January 13, 2001.

Section 410.202(a) provides that a request for review shall be filed not later than the 15th day after the date on which the hearing officer's decision is received. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for review is presumed to have been timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and is received by the Commission not later than the 20th day after the date the hearing officer's decision is received. 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 Texas Workers' Compensation Commission Appeal No. 991565, decided August 23, 1999 (Unpublished).

In that the claimant received the hearing officer's decision on January 13, 2001, the last date for the claimant's appeal to have been timely mailed was Monday, January 29, 2001 (January 28, 2001, being a Sunday) with the last date to have been timely received being Friday, February 2, 2001. While there is some evidence that the claimant's appeal was timely mailed on January 26, 2001, the only evidence of receipt is a facsimile transmission of the appeal received on February 15, 2001. The claimant's appeal, not having been received by February 2, 2001, was not timely filed.

The claimant's appeal being untimely, the decision of the hearing officer has become final. Section 410.169.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge