

APPEAL NO. 010474

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 January 8, 2001. The hearing officer determined that the appellant (claimant) sustained an occupational disease (bilateral hearing loss) injury; that the date of injury is _____; and that the claimant timely reported the injury to his employer, but that the claimant failed to timely file his claim and had no good cause for failing to do so and, therefore, the respondent (carrier) is relieved of liability.

The claimant appealed, contending that he had good cause for failing to timely file his claim. The carrier responded, asserting that the claimant's request for review was not timely filed and otherwise urged affirmance. The claimant responds, explaining why he believes his appeal was timely filed.

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 February 5, 2001, under a cover letter dated January 29, 2001. The claimant, in his appeal, states that he received the hearing officer's decision and order on March 2, 2001, when he received a copy of the decision from his ombudsman. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)) provides that the deemed date of receipt of "those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt" shall be deemed to have been received five days after the date mailed. In this case, the decision was mailed on February 5, 2001, and was deemed to have been received on February 10, 2001. The address to which the decision was mailed is the same return address listed on the claimant's appeal.

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 was received. 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. As the deemed receipt date was February 10, 2001, the last day for the claimant's appeal to have been timely mailed was Monday, February 26, 2001 (see Rule 102.3(a)(3) provision when the last day is not a working day) and the last day for the appeal to have been received was March 2, 2001. The claimant's appeal is dated and postmarked March 3, 2001, and was received on March 6, 2001. The claimant's appeal, having been mailed after February 26, 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:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge