

## APPEAL NO. 010528

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 30, 2001. The hearing officer determined that appellant/cross-respondent (claimant) did not sustain an occupational disease while working for the employer; the date of the claimed injury is \_\_\_\_\_; the claimed occupational disease was reported to the employer in a timely manner and the respondent/cross-appellant (carrier) is not relieved of liability on this basis; and the claimant did not have disability. The claimant appeals the determinations that he did not sustain an occupational disease and that he did not have disability on sufficiency grounds. The carrier also submitted an appeal, on sufficiency grounds, of the hearing officer's determinations that the date of the claimed injury is \_\_\_\_\_, and that claimant timely notified the employer. 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 review 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 Texas Workers' Compensation Commission (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 for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994.

The records of the Commission reflect that the carrier's (city 1) representative received the hearing officer's decision on February 21, 2001. The carrier had 15 days, or until March 8, 2001, to mail the appeal and another five days, or until March 13, 2001, for the appeal to be received by the Commission's central office in city 1. The carrier's appeal was postmarked March 13, 2001, and received on March 14, 2001. It was therefore untimely, and will not be considered in resolution of this case.

The claimant made a second written submission which was likewise untimely. It is dated March 15, 2001, postmarked March 16, 2001, and was received on March 20, 2001. It is clearly not a response to the carrier's submission, but an additional appeal of the hearing officer's decision. It cannot be considered in the resolution of this case. The carrier did submit a timely response to the claimant's first (timely) submission, urging that the relief requested by the claimant be denied.

## DECISION

Affirmed.

We have reviewed the claimant's appeal, the carrier's response, and the record. We conclude that the issues involved fact questions for the hearing officer. The hearing

officer reviewed the record and decided what facts were established. We conclude that the determinations of the hearing officer are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

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Michael B. McShane  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge