

APPEAL NO. 010556

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on February 7, 2001, the hearing officer resolved the disputed issues by determining that because the appellant, Ms. H, has not shown that she has the legal authority to represent the personal estate of the deceased claimant (claimant), she does not have legal standing to pursue the claim for impairment income benefits (IIBs) at this time, and that because any right to IIBs are personal property of the claimant's estate, and no party representing that interest was served with notice of the hearing, the hearing lacks an essential party and is therefore dismissed. Ms. H has filed a request for review. In response, the respondent (carrier) first asserts that Ms. H's request for review is untimely and then goes on to contend that the evidence is sufficient to support the challenged determinations.

DECISION

A timely appeal not having been filed with the Texas Workers' Compensation Commission (Commission) and the jurisdiction of the Appeals Panel not having been properly invoked, the decision and order of the hearing officer have become final.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request 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 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.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on February 22, 2001, under a cover letter of the same date. In her appeal Ms. H states that she received the decision on February 26, 2001. Accordingly, the appeal was required to have been mailed by the 15th day thereafter, namely, March 13, 2001. Since the envelope containing the appeal reflects that it was post stamped on March 14, 2001, the appeal was not timely filed.

The decision and order of the hearing officer have become final pursuant to Section 410.169.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge