

APPEAL NO. 010599

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 28, 2001, the hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained an injury to his neck in addition to his mid and low back on _____. The appellant (carrier) has requested our review, asserting that the hearing officer's decision is against the great weight and preponderance of the evidence. The claimant has filed no response.

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 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 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 received by the carrier's (city 1) representative on March 6, 2001. Thus, the carrier had 15 days, or until March 21, 2001, (a Wednesday) to mail the appeal and another five days, or until March 26, 2001, (a Monday) for the appeal to be received by the Commission's central office in city 1. The envelopes accompanying the carrier's appeal reflect that the carrier placed the appeal in the mail on March 12, 2001; that the appeal was returned to the carrier for additional postage; that the carrier added the additional postage and again mailed the appeal on March 22, 2001; and that the appeal was received by the Commission on March 26, 2001. When a party's appeal is returned for insufficient postage and is re-mailed to the Commission, we use the postmark on the re-mailing to determine if the appeal is timely. Texas Workers' Compensation Commission Order No. 97038, decided October 21, 1997. Accordingly, the appeal was not mailed by the 15th day and it is therefore untimely.

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

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge