

## APPEAL NO. 010610

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 January 29, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable occupational disease injury on \_\_\_\_\_; that she did not timely report the claimed injury and did not have good cause for her untimely reporting; and that she did not have disability. In her appeal, the claimant contends that she did indeed sustain a repetitive trauma injury at work and that she reported it to her employer as soon as she had "full knowledge from [her] doctor as to how her condition was caused over a period of time . . . ." The file does not contain a response from the respondent (carrier).

### 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 appeal 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 reflects that the hearing officer's decision was mailed to the claimant on February 28, 2001, under a cover letter of the same date. The claimant is deemed to have received the decision and order five days later, namely, on March 5, 2001. Thus, to be timely, the claimant's appeal was required to have been mailed by the 15th day thereafter, namely, by March 20, 2001. The claimant's appeal is dated March 21, 2001, and the envelope containing the appeal reflects that it was postmarked on March 21, 2001. Accordingly, the claimant's appeal was not timely filed and has not properly invoked the jurisdiction of the Appeals Panel.

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

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge