

APPEAL NO. 010796

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 March 7, 2001. The hearing officer determined that the appellant's (claimant) correct impairment rating was 14%. The claimant submitted an appeal of that determination. The respondent (carrier) responded, urging affirmance.

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 pursuant to Section 410.169.

Section 410.202(a) provides that "to 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 is 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 in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on March 21, 2001, under a cover letter of the same date. Notwithstanding that the claimant states in his request for review that he received the hearing officer's decision and order on March 27, 2001, he is deemed to have received it on the fifth day after it was mailed by the Commission, March 26, 2001, unless the great weight of the evidence shows otherwise. Rule 102.5(d). The Commission's letter was addressed to the claimant at the address he wrote on his envelope mailing his appeal and, aside from simply writing that he received the decision on March 27, 2001, the file does not establish by the great weight of the evidence that he did not receive the decision by the fifth day after it was mailed. The claimant had 15 days from the date he is deemed to have received the decision, or until April 10, 2001, to mail his appeal and another five days, or until April 16, 2001 (date extended one day, by operation of Rule 102.3(a)(3), extending the period to the next working day, if the last day of any period is not a working day), for the appeal to be received by the Commission. The envelope containing the appeal reflects that it was timely mailed on April 7, 2001, but was misaddressed and not received by the Commission until April 17, 2001, the 22nd day after the claimant is deemed to have received the decision. The Commission's cover letter of March 21, 2001, stated the Commission's

correct address. Accordingly, the appeal, not having been received within the allotted time period, is untimely.

The claimant's appeal being untimely, the decision and order of the hearing officer have become final. Section 410.169.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge