

APPEAL NO. 010980
FILED JUNE 21, 2001

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 April 11, 2001, the hearing officer resolved the two disputed issues by determining that the respondent's (claimant) compensable injury of _____, extends to an injury to his lungs in the form of COPD and dyspnea but not asthma, acute bronchitis or bronchiolitis. He also determined that the claimant had disability from the compensable injury only for the period November 23, 1999, through April 26, 2000. The appellant (carrier) has filed a request for our review of the determination that the compensable injury extends to and includes COPD and dyspnea as well as the disability determination. The claimant's response urges the sufficiency of the evidence to warrant our affirmance.

DECISION

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

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 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 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. 010112, decided February 13, 2001.

Records of the Commission reflect that the hearing officer's decision was distributed to the parties on April 17, 2001, and was received the carrier's representative on April 18, 2001. Thus, the carrier's appeal was required to be mailed not later than May 3, 2001, a Thursday, and to be received by the Commission not later than May 8, 2001, in order to be timely filed. The envelope containing the carrier's appeal bears a date stamp reflects that it was mailed on May 4, 2001, and received on May 7, 2001. Accordingly, the appeal was not timely filed.

The carrier's appeal being untimely, the decision of the hearing officer has become final. Section 410.169.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge