

APPEAL NO. 011032
FILED JUNE 18, 2001

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 17, 2001. The hearing officer determined that the appellant's (claimant) compensable injury of _____, includes the right arm but not the neck or myofascial pain syndrome to the right wrist and that the claimant has not had disability.

The claimant appealed the disability issue reciting evidence to support her position. The respondent (carrier) responds, urging affirmance.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was mailed to the claimant on April 20, 2001, under cover letter of the same date. The claimant in her appeal, states that she received the hearing officer's decision and order on April 26, 2001. However pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), as amended August 29, 1999, unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed, or in this case on April 25, 2001.

Section 410.202(a) provides that a request for appeal shall be filed no later than the 15th day after the date on which the hearing officer's decision is received. Rule 143.3(c) provides that a request for appeal is presumed to have been timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and is received by the Commission no later than the 20th day after the date the hearing officer's decision is received. The last day for the claimant's appeal to have been timely filed or mailed was Thursday, May 10, 2001. The claimant's appeal is dated May 11, 2001, received by the Commission on that date with a copy having been mailed with a postage meter date of May 11, 2001. The appeal not having been filed or mailed on or before the May 10, 2001, was thus untimely.

The appeal being untimely, the jurisdiction of the Appeal Panel was not properly invoked and the decision and order of the hearing officer have become final under Section 410.169.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge