

APPEAL NO. 011057  
FILED JUNE 27, 2001

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 8, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury and did not have disability. On appeal, the claimant expresses disagreement with these determinations. Furthermore, the claimant requests that her appeal be given consideration even though it was not filed within the required time period. The respondent (self-insured) urges that the claimant's appeal is not timely filed and, in the alternative, requests that the hearing officer's decision be affirmed.

DECISION

Determining that the claimant's appeal was not timely filed, the hearing officer's decision and order have become final pursuant to Section 410.169 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.16(f) (Rule 142.16(f)).

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was distributed to the claimant, at the address she used as her return address in mailing her appeal, on March 15, 2001, with a cover letter of the same date. The claimant's request for review indicates that she never received the hearing officer's decision and order by mail and did not learn of the decision until April 30, 2001, when she contacted the Commission by phone. In Texas Workers' Compensation Commission Appeal No. 94117, decided March 3, 1994, we stated "[w]here Commission records show distribution on a particular day to the address confirmed by the claimant as being accurate, a mere statement that the decision was not received in the mail is not sufficient to extend the date of receipt past the deemed date of [receipt established by Rule 102.5(d)]." We believe that our decision in Appeal No. 94117 is controlling. Thus, the claimant's unexplained statement that she did not receive the decision is insufficient to extend the period for filing a timely appeal. This outcome is consistent with our unpublished decisions in Texas Workers' Compensation Commission Appeal No. 94631, decided June 29, 1994, and Texas Workers' Compensation Commission Appeal No. 960346, decided March 29, 1996.

Under Rule 102.5(d), the claimant is deemed to have received the decision and order five days after the date it is mailed, or on March 20, 2001. Under Rule 143.3(c) a request for review is timely if it is mailed on or before the 15th day after the date of receipt

of the hearing officer's decision. In this instance, the 15th day after the deemed date of receipt was Wednesday, April 4, 2001. The claimant's appeal is postmarked May 14, 2001, and is, therefore, untimely.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge