

APPEAL NO. 011135  
FILED JUNE 28, 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 April 27, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) sustained a compensable injury to her low back on \_\_\_\_\_; that the claimant's injury of \_\_\_\_\_, was not a producing cause of the lumbar disc injury at the L4-5 level; and that the claimant had disability on September 19 and 20, 2000. The claimant appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision has become final under Section 410.169 because the claimant's request for appeal was not timely filed with the Texas Workers' Compensation Commission (Commission).

Section 410.202(a) provides that "[t]o 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 appeal 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 in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002659, decided December 12, 2000. Rule 102.5(d) provides, in part, that for purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed. The Appeals Panel has held that a signed acknowledgment of an earlier date of receipt prevails over the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 992016, decided October 28, 1999.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on May 2, 2001. The claimant states in her appeal that she received the hearing officer's decision on May 3, 2001. The 15th day after May 3, 2001, was Friday, May 18, 2001, and the 20th day after May 3, 2001, was Wednesday, May 23, 2001. The envelope in which the claimant's appeal was mailed to the Commission is postmarked May 22, 2001, and the appeal was received by the Commission on May 24, 2001. We conclude that the claimant's appeal was not timely filed with the Commission because it was not mailed by May 18, 2001, nor received by the Commission by May 23, 2001. Section 410.169 provides that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

The hearing officer's decision and order have become final under Section 410.169.

---

Robert W. Potts  
Appeals Judge

CONCUR:

---

Susan M. Kelley  
Appeals Judge

---

Robert E. Lang  
Appeals Panel  
Manager/Judge