

APPEAL NO. 011187  
FILED JULY 09, 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 (CCH) was commenced on January 17, 2001, with the record closing on February 2, 2001. With regard to the issues before him the hearing officer determined that the appellant (claimant herein) did not sustain a compensable injury and did not have disability, and that the respondent (carrier herein) was relieved of liability because the claimant did not timely notify his employer of the alleged injury. The claimant filed a request for review. There is no response to the claimant's request for review from the carrier in the appeal file.

DECISION

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

The claimant did not appear at the CCH and did not respond to a letter from the Texas Workers' Compensation (Commission) giving him ten days to show cause why he did not appear. The hearing officer then issued a decision in the case. Records of the Commission show that the decision of the hearing officer was mailed to the parties on February 8, 2001. The claimant states in his request for review that he received this decision on May 15, 2001, and that the decision and the show cause letter were not mailed to the claimant's address of record on file with the Commission.

Under Section 410.202(a), an appeal, to be timely, must be filed or mailed within 15 days of the date of receipt of the hearing officer's decision. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and 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.

The claimant's attorney states that the claimant never received the hearing officer's decision by mail, but first received it at a benefit review conference on May 15, 2001. The attorney asserts that the Commission did not mail the hearing officer's decision to the claimant at the address the claimant had on file with the Commission. Rule 102.5(d) provides that, 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. The Appeals Panel has held that, where Commission records show mailing on a particular day a mere statement that the decision was not received until a later date is not sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998. The claimant

offers no evidence to support his assertion that the decision was not mailed to the address the claimant had on file with the Commission at the time the decision was mailed. Absent any evidence, we must deem receipt on the fifth day after the Commission mailed the decision, or February 13, 2001.

The last day for the claimant to timely file an appeal would have been Wednesday, February 28, 2001, and the last day for the appeal to have been timely received by the Commission was Monday, March 5, 2001. The claimant's appeal was sent to the Commission by facsimile transmission on May 30, 2001. The claimant's appeal is untimely, having both been mailed after the 15-day deadline and received by the Commission after the 20-day deadline set by Rule 143.3(c).

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

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge