

APPEAL NO. 950160

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case is before us again following our remand in Texas Workers' Compensation Commission Appeal No. 94471, decided June 7, 1994. The remand was to have the hearing officer obtain additional evidence as to whether the designated doctor properly applied the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (the AMA Guides) in determining the impairment rating (IR) of appellant (claimant herein).

On remand the hearing officer contacted both the designated doctor and the treating doctor, who had raised the issue that the designated doctor had failed to properly apply the AMA Guides. The hearing officer asked that the treating doctor restate and clarify his concerns about the method used by the designated doctor in assessing IR. The hearing officer then forwarded these concerns to the designated doctor asking for his response. The hearing officer also gave the parties an opportunity to comment on the statements of the doctors and the comments of one another. Having considered all this, the hearing officer concluded that the claimant had a zero percent IR based upon the certification of the designated doctor.

The claimant files a request for review, stating that the hearing officer should have used the seven percent IR assessed by his treating doctor in determining his IR. The respondent (carrier herein) does not file a response.

DECISION

Determining that the claimant's appeal was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, we find the decision of the hearing officer has become final pursuant to Section 410.169.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.16 (Rule 142.16) provides that the Texas Workers' Compensation Commission (Commission) shall furnish the parties a copy of the hearing officer's decision. In regard to communications from the Commission, Rule 102.5 provides, in relevant part, that:

(a) All notices and written communications to the claimant or claimant's representative will be mailed to the last address supplied by that claimant or representative.

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(h) For purposes of determining the date of receipt for those notices and other written communications which require action by a date specific after

receipt, the commission shall deem the received date to be five days after the date mailed.

Section 410.202(a) provides as follows:

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.

Rule 143.3(a)(3) provides that a request for review of the hearing officer's decision shall be filed with the Commission's central office in (city) "not later than the 15th day after receipt of the hearing officer's decision . . . ." Rule 143.3(c) goes on to provide the following:

(c)A request made under this section shall be presumed to be timely filed or timely served if it is:

(1)mailed on or before the 15th day after the date of receipt of the hearing officer's decision, as provided in subsection (a) of this section; and

(2)received by the commission or other party not later than the 20th day after the date of receipt of the hearing officer's decision.

Finally, Section 410.169 provides in relevant part: "A decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party . . . ."

In the present case, according to Commission records, the Commission distributed a copy of the decision to the parties on December 29, 1994, under a cover letter dated December 27, 1994. The claimant's attorney does not state in her request for review the date he received this decision. Under Rule 102.5(h) the claimant was presumed to have received this notice five days after it was distributed or by January 3, 1995. The claimant had only 15 days or by January 18, 1994, to mail his appeal to the Commission. Instead the claimant sent his request for review to the Commission by mail and facsimile transmission. The request, which was dated January 31, 1995, was received by facsimile on January 31, 1995. The mailed request was postmarked January 31, 1995, and was received February 2, 1995. Thus, pursuant to Section 410.169, we must find that the decision of the hearing officer is final.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Alan C. Ernst  
Appeals Judge