

APPEAL NO. 950177

In Texas Workers' Compensation Commission Appeal No. 94416, decided May 24, 1994, we reversed the decision and order of the hearing officer, (hearing officer), which he issued following a contested case hearing (CCH) he held in (city), Texas, on March 1, 1994, and remanded the case for a statement of the good cause grounds which the hearing officer said he found for appellant's (claimant) not having raised a carrier waiver issue at the benefit review conference (BRC), and for his decision of the disputed issues of maximum medical improvement (MMI) and the claimant's impairment rating (IR) which the hearing officer had purported to sever and remand to other personnel of the Texas Workers' Compensation Commission (Commission) for further action. After claimant failed to appear at the remand hearing convened on June 16, 1994, the hearing officer found good cause for his failure to appear and continued the CCH to July 12, 1994. On that date, claimant called the Commission seeking a continuance, the continuance was denied, and claimant failed to appear although the ombudsman assisting him was present and testified. The hearing officer's decision on remand addressed the remand issues stating the good cause basis for claimant's not adding the carrier waiver issue at the BRC and finding that the compensability of claimant's cervical and thoracic spine injuries, in addition to his lumbar spine injury, was established by the evidence, and that claimant reached MMI on August 24, 1993, with an IR of five percent based on the report of the second designated doctor selected by the Commission.

Claimant's appeal appears to address only the issue of his IR. The respondent (carrier) asserts that claimant's appeal is untimely.

DECISION

Determining that the request for review was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, the decision of the hearing officer has become final pursuant to the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 410.169 (1989 Act).

The Commission's records show that the hearing officer's decision on remand, signed on July 26, 1994, was distributed to the parties on August 4, 1994, under cover letter dated August 3, 1994. Claimant does not state the date he received the decision so we apply Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)) which provides that the Commission shall deem the received date of its written communications to be five days from the date mailed. Accordingly, claimant is deemed to have received the decision on August 9, 1994.

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." See *also* Rule 143.3(a)(3). Rule 143.3(c) provides that a request for review shall be

presumed to be 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 not later than the 20th day after such receipt. Since claimant is deemed to have received the decision on August 9, 1994, his deadline to appeal was 15 days later, that is, August 24, 1994. Claimant's appeal was sent to the Commission by electronic document transfer on February 6, 1995, and received on that date. Accordingly, the appeal is determined to be untimely and the jurisdiction of the Appeals Panel has not been properly invoked.

Because claimant did not timely file an appeal from the hearing officer's decision, the decision and order have become final pursuant to Section 410.169.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge