

APPEAL NO. 950293

On December 5, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The appellant (claimant) disagrees with the hearing officer's decision that she did not sustain a compensable injury on (date of injury), and that she has not had disability. The respondent (carrier) responds that the appeal is not timely and requests affirmance.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the claimant's appeal was not timely filed.

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* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a) (Rule 143.3(a)). Rule 143.3(c) provides that a request for review 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. Rule 102.5 provides general rules for written communications to and from the Commission, and Subsection (h) of that rule states that "[f]or 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."

Records of the Commission show that the hearing officer's decision was distributed to the parties on January 20, 1995, with a cover letter dated January 18, 1995. The hearing officer's decision was re-distributed to the parties on January 26, 1995, with a cover letter dated January 26, 1995, because the decision had not been sent to the correct Austin representative for the carrier. On both occasions the decision was mailed to the claimant at the address shown as the return address on the envelope transmitting her appeal to the Commission. The claimant does not state when she received the decision. Under Rule 102.5(h) the deemed date of receipt of the hearing officer's decision by the claimant is January 25, 1995. The 15th day after January 25, 1995, was Thursday, February 9, 1995, and that was the date by which the claimant's appeal had to be mailed to the Commission. The envelope transmitting the claimant's appeal to the Commission is postmarked February 25, 1995, and the appeal was received by the Commission on February 27, 1995. Consequently, the claimant's appeal was not timely filed. Pursuant to Section 410.169, a decision of a hearing officer regarding benefits is final in the absence of a timely appeal. We note that the claimant's appeal would also be untimely if the re-distribution date is used.

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

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge