

APPEAL NO. 950309

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 30, 1995, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer determined that the appellant's (claimant herein) rectal bleeding was not the result of treatment she received for a compensable injury of (date of injury), and that she had disability from August 30 to September 1, 1994, and again from September 21, 1994, through the date of the hearing. Claimant in her appeal expresses disagreement with the findings as to the compensability of the rectal bleeding and disability to the extent the hearing officer did not also find disability for the period from September 6, 1994, to September 14, 1994. Respondent (carrier herein) replies that the decision and order of the hearing officer are supported by sufficient evidence and should be affirmed.

DECISION

Determining that the claimant's appeal was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, the hearing officer's decision and order have become final pursuant to Section 410.169 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.16(f) (Rule 142.16(f)).

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on February 7, 1995. The claimant indicates in her request for review that she received a copy of the decision on February 9, 1995. A request for review is timely if it is mailed on or before the 15th day after it was received. In this case, the 15th day after receipt was Friday, February 24, 1995. Claimant's request for review was postmarked February 27, 1995. Therefore, the appeal was untimely.

Having nonetheless reviewed the record in this case, we conclude that had the appeal been timely filed, we would have affirmed the decision and order of the hearing officer because it was supported by sufficient evidence.

The claimant is correct in her assertion that complications or subsequent injury caused by the treatment of a compensable injury are also compensable. Texas Workers' Compensation Commission Appeal No. 931136, decided January 27, 1994. However, the claimant bears the burden of proving by a preponderance of the evidence that the subsequent injury was caused by the medical treatment. This is generally a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 931053, decided December 28, 1993. The claimant suggests that the statement of (Dr. R), her treating doctor, that she had a "recurrence of [rectal bleeding] as a result of her participation in a functional capacity test which was ordered as a result of an accident at work," compelled a finding that the rectal bleeding was caused by the functional capacity evaluation. There was other evidence from Dr. R and from pathology tests that this condition was nonspecific chronic inflammation. The hearing officer resolves conflicts and

inconsistencies in the medical evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286(Tex. App.-Houston [14th Dist.] 1984, no writ). She was free to accept or reject one opinion on the cause of the rectal bleeding in favor of another. The hearing officer concluded that the evidence established only that the bleeding began during the functional capacity test, but did not establish that the test caused the bleeding. We will reverse a hearing officer's decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629 (Tex. 1986). Under this standard of review, we would have found the evidence sufficient to support the decision and order of the hearing officer.

As to the claimant's appeal of the disability issue, the evidence in the form of a duty release from Dr. R reveals that he based his release of the claimant from work from September 8, 1994, to September 12, 1994, on the rectal bleeding. Disability under the 1989 Act must be caused by a compensable injury. Section 410.011(16). Because the rectal bleeding was not a compensable injury, it cannot be the cause of disability.

Since the claimant's appeal was untimely, the jurisdiction of the Appeals Panel was not properly invoked. Pursuant to Section 410.169 and Rule 142.16(f), the decision and order of the hearing officer have become final.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge