

## APPEAL NO. 950325

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held in (city), Texas, on January 13, 1995, to determine the following issues: did the Texas Workers' Compensation Commission (Commission) properly designate a doctor in accordance with Rule 130.6 (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6), and what is the claimant's impairment rating (IR). The hearing officer, (hearing officer), determined that (Dr. S) was designated by the Commission in accordance with the appropriate rule, and that his determination that claimant has an 11% IR is in accordance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and is not against the great weight of other medical evidence. The claimant appeals, contending that she was unable to present her position because the hearing officer improperly excluded a report from one of her doctors. The appeal further states that claimant's attorney, due to error on the part of the Commission, did not receive a copy of the hearing officer's decision until February 14, 1995, and that thus the appeal is filed timely.

### DECISION

Finding that the claimant's request for review was not timely filed, the decision of the hearing officer has become final.

Records of the Commission show that the hearing officer's decision was distributed to the parties on February 9, 1995, by letter dated February 8, 1995.

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)(3) (Rule 143.3(a)(3)). A request for review is presumed to be timely filed if it is mailed on or before the 15th day after the date of receipt of the decision and is received by the Commission not later than the 20th day after the date of receipt. Rule 143.3(c). Further, pursuant to Rule 102.5(h), a party is deemed to have received the decision and order five days after the date it was mailed or, in this case, by February 14, 1995. In this case, the 15th day after this deemed date of receipt was March 1, 1995. The claimant's appeal, however, was postmarked March 6th and date stamped as received by the Commission on March 7, 1995, and thus was not timely pursuant to the statute and rules cited above.

In the request for review, claimant's attorney, who gives a (city) office address, states that the Commission mailed the hearing officer's decision to an attorney by the same name in (city); the transmittal letter from the Commission reflects that this is the case. The claimant's attorney argues that the other attorney received the decision on February 14th,

and that he himself received it on February 21st; he therefore argues that the appeal is being filed within 15 days of his receipt.

It is certainly unfortunate that the hearing officer's decision and order were sent to the wrong attorney, particularly one who resides in a different city than the correct attorney. This mishap notwithstanding, we have previously held that the time period for appeals runs from the date the party, and not his or her attorney, receives the decision. See Texas Workers' Compensation Commission Appeal No. 92219, decided July 15, 1992, which cites Rule 102.4(b) as follows:

(b)After the insurance carrier or the commission is notified in writing that a claimant is represented by an attorney or other representative, all copies of notices and reports to the claimant will be thereafter mailed to the representative and the claimant, unless the claimant requests delivery to the representative only. However, copies of settlements, notices setting benefit review conferences and hearings, and orders of the commission shall be sent to the claimant by the commission.

That opinion concluded, "Since the statute gives the party, not the representative, the right to appeal, and provides the party, not the representative, with 15 days in which to file an appeal, and since TWCC Rule 102.4(b) requires that Commission orders be sent to claimants, the operative date for determining the timeliness of this appeal is the date appellant, not his representative, received the Commission's decision."

We note that under the facts of that particular case, the Commission inadvertently omitted the claimant's attorney from the distribution list and mailed that individual a copy more than two weeks after the decision and order had originally been distributed.

There was no evidence in this case that this claimant had requested delivery of the above-noted documents only to her representative. That being the case, this appeal is governed by the statute and rules set forth above, as well as the reasoning of Appeal No. 92219, *supra*.

The appeal not having been timely filed, the decision and order of the hearing officer are final pursuant to Section 410.169 and rules of the Commission.

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Lynda H. Neseholtz  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Robert W. Potts  
Appeals Judge