

## APPEAL NO. 950328

On December 9, 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 his carpal tunnel syndrome in the left arm is not the result of a compensable injury sustained on (date of injury), and that he did not have disability resulting from the injury sustained on (date of injury). The respondent (carrier) 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 February 10, 1995, with a cover letter dated February 9, 1995. The claimant does not state when he received the decision. Under Rule 102.5(h) the deemed date of receipt of the hearing officer's decision by the claimant is February 15, 1995. The 15th day after February 15, 1995, was Thursday, March 2, 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 March 4, 1995, and the appeal which was mailed to the Commission was received by the Commission on March 7, 1995. Thus, since the appeal which was mailed to the Commission was not mailed until after March 2, 1995, it was not timely filed with the Commission. The claimant also sent a copy of his appeal to the Commission by facsimile transmission on March 6, 1995, and the faxed copy was received on March 6, 1995. Since the faxed copy of the appeal was not received by the Commission until after March 2, 1995, it too was not timely filed with the Commission within 15 days after the date of receipt of the hearing officer's decision. Pursuant to Section 410.169, a decision of a hearing officer regarding benefits is final in the absence of a timely appeal.

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

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Robert W. Potts  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Lynda H. Nesenholtz  
Appeals Judge