

APPEAL NO. 950355

At a contested case hearing held in (city), Texas, on October 27, 1994, the hearing officer, (hearing officer), took evidence on the sole disputed issue, namely, whether the appellant (carrier) is entitled to a reduction of the respondent's (claimant) impairment income benefits (IIBS) based on the contribution of prior compensable injuries and, if so, by what proportion. Finding that claimant sustained an injury to his back and right knee on (date of injury), and has been assigned a 15% whole body impairment rating (IR), and that eight percent of his current impairment is due to his first back surgery and two percent to his second back surgery, the hearing officer concluded that the carrier was entitled to contribution of 66.67% for claimant's prior compensable injuries. The carrier has appealed asserting, in essence, that the hearing officer's failure to allow the carrier a contribution of 80% for the two prior compensable injuries was against the great weight of the evidence because a designated doctor had opined that the contribution of the two prior compensable injuries was 80% and the hearing officer simply departed downward from such opinion arbitrarily with no explanation of his rationale. No response was filed by the claimant.

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).

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was distributed to the parties on February 21, 1995, and received by the carrier's (city) representative in (city), Texas, on that same day. TWCC Advisory 93-11 issued November 4, 1993, entitled "Modification of Commission Operations Concerning Delivery of Documents," which provides, in part, that all documents and notices required to be provided by the Commission to insurance carriers will be placed in the boxes of the carriers' (city) representatives at the Commission's (city) central office, and that notice to the carriers for all purposes will be established by this notification.

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)) providing that a request for review shall be presumed timely if mailed on or before the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after such receipt. Since the carrier received the decision on February 21, 1995, its deadline to appeal was 15 days later, that is, March 8, 1995. The carrier's appeal was deposited with an express delivery service addressed to the Commission on March 9, 1995, and was also transmitted on that date by electronic document transfer. Accordingly, the

appeal is determined to be untimely and the jurisdiction of the Appeals Panel has not been properly invoked.

As to the possible merits of claimant's appeal, see Texas Workers' Compensation Commission Appeal No. 941716, decided February 6, 1995, concerning the opinion of a designated doctor on the issue of contribution.

Because the carrier 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:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge