

APPEAL NO. 950368

On December 1, 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 he reached maximum medical improvement on March 2, 1994, with an 11 percent impairment rating as reported by the designated doctor. 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 December 22, 1994, with a cover letter dated December 21, 1994. 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 December 27, 1994. The 15th day after December 27, 1994, was Wednesday, January 11, 1995, and that was the date by which the claimant's appeal had to be mailed to the Commission. The claimant's appeal is dated March 8, 1995, and the envelope in which it was mailed to the Commission is postmarked March 8, 1995. The appeal was received by the Commission on March 10, 1995. Consequently, the claimant's appeal 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 claimant indicates in his appeal that he had difficulty in contacting the field office in regard to how to file his appeal. That does not extend the time period for filing the appeal. We note that at the conclusion of the hearing the hearing officer advised the parties of the time period for filing an appeal, and we also note that the cover letter transmitting the hearing officer's decision to the claimant states that a fact sheet explaining what to do if the claimant wanted to appeal the decision was sent to the claimant with the decision.

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

Robert W. Potts
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Gary L. Kilgore
Appeals Judge