

APPEAL NO. 950403

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 19, 1995, a hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) did not dispute the first assigned impairment rating (IR) within 90 days after receiving notice of it, and it therefore became final; claimant's treating doctor issued the initial IR stating that claimant reached maximum medical improvement (MMI) from his injury of (date of injury), on September 30, 1992, with a six percent IR. In addition, an injury to a different level of claimant's back, not noted on studies made in (month year), but reflected after a car accident in (year), was found not to be compensable. Claimant asserts on appeal that the hearing officer is wrong as to the facts and the outcome of his decision.

DECISION

Finding that the request for review was not timely filed, the decision of the hearing officer is final. See Sections 410.169 and 410.202.

The Decision and Order of the hearing officer was signed on February 2, 1995, and distributed on February 14, 1995, by cover letter dated February 13, 1995. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)) provides that a notice, such as that of the decision of a hearing officer, will be deemed to be received five days after mailing. Section 410.202 then provides that a request for appeal must be filed no later than 15 days from the date the decision of the hearing officer is received. With five days allowed for mailing, claimant is deemed to have received the decision of the hearing officer no later than February 19, 1995. (Claimant stated in his appeal that he had been in the hospital and did not personally receive the decision until February 20, 1995, when he was released.) Claimant's appeal is dated March 8, 1995, but the envelope in which it was mailed was not posted until March 15, 1995. The appeal was received on March 17, 1995. Rule 143.3 provides that a request for appeal will be presumed to be timely filed if mailed on or before the 15th day after receipt of the hearing officer's decision. The appeal was mailed 24 days after deemed to be received on February 19, 1995, and received 26 days after February 19, 1995; it is untimely.

Claimant requests that the 15-day period for appealing be waived. Texas Workers' Compensation Commission Appeal No. 931075, decided January 7, 1994, pointed out that the 15-day period for appealing is jurisdictional; the request that such period be waived is denied. (We note that the hearing officer, on the record at the close of the hearing, specifically told the parties that any appeal must be filed no later than 15 days after receiving the decision.)

With no timely appeal, the decision and order of the hearing officer are final. See Section 410.169.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge