

APPEAL NO. 980088

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 12, 1997. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury and whether he had disability. The hearing officer determined that the claimant did not sustain a compensable injury and therefore did not have disability. The claimant, in an untimely appeal, states his disagreement with the decision and asks that the decision be reversed. The respondent (carrier) asserts that the appeal is untimely and that, regardless, the decision is supported by sufficient evidence.

DECISION

Determining that the request for review was not timely filed, the jurisdiction of the Appeals Panel has not been properly invoked. The decision of the hearing officer has become final pursuant to Section 410.169.

The records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was mailed to the parties on December 22, 1997. Applying the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §§ 102.3(a)(3) and 102.5(h) (Rules 102.3(a)(3) and 102.5(h)), the deemed receipt date by the claimant was December 29, 1997. Section 410.202(a) generally provides that to appeal a decision of a hearing officer, the request for review must be filed not later than the 15th day after the receipt of the hearing officer's decision. Here, the 15th day would be January 13, 1998. The request for review filed by the claimant in this case was sent to the Commission on January 14, 1998, and received the same day. Thus, it was not filed within the 15-day time period of Section 410.202(a). Pursuant to Section 410.169, the decision of the hearing officer became final. While the claimant indicated that he was visiting out of town during the holidays, this does not extend the filing period. Texas Workers' Compensation Commission Appeal No. 92727, decided February 12, 1993; Texas Workers' Compensation Commission Appeal No. 94054, decided February 15, 1994. See *also* Texas Workers' Compensation Commission Appeal No. 950039, decided February 16, 1995; and Texas Workers' Compensation Commission Appeal No. 94117, decided March 3, 1994.

We have also reviewed the evidence of record and conclude it is sufficient to support the decision of the hearing officer. In any event, the decision of the hearing officer is final under the circumstances.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge