

APPEAL NO. 980115

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 8, 1997. The issues at the CCH were disability and bona fide offer of employment. The hearing officer found that the appellant (claimant herein) did have disability beginning on July 24, 1997, and continuing through the date of the CCH. The hearing officer found that the respondent (self-insured herein) made a bona fide offer to the claimant on July 22, 1997. The claimant appeals arguing that the hearing officer erred in refusing to admit certain evidence and in determining that the self-insured made a bona fide offer of employment. The self-insured responds that we lack jurisdiction to consider the claimant's appeal because it is untimely and, in the alternative, that the hearing officer did not commit error.

DECISION

We lack jurisdiction because the claimant's request for review was not timely filed and the decision and order of the hearing officer have become final by operation of Section 410.169.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.16 (Rule 142.16) provides that the Texas Workers' Compensation Commission (Commission) shall furnish the parties a copy of the hearing officer's decision. In regard to communications from the Commission, Rule 102.5 provides, in relevant part, that:

- (a) All notices and written communications to the claimant or claimant's representative will be mailed to the last address supplied by that claimant or representative.

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- (h) For 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.

Section 410.202(a) provides as follows:

To 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.

Rule 143.3(a)(3) provides that a request for review of the hearing officer's decision shall be filed with the Commission's central office in Austin "not later than the 15th day after receipt of the hearing officer's decision. . . ." Rule 143.3(c) goes on to provide the following:

- (c) A request made under this section shall be presumed to be timely filed or timely served if it is:
 - (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision, as provided in subsection (a) of this section; and
 - (2) received by the commission or other party not later than the 20th day after the date of receipt of the hearing officer's decision.

Finally, Section 410.169 provides in relevant part: "[a] decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party. . . ."

In the present case, according to Commission records, the Commission distributed a copy of the decision to the parties on December 19, 1997. The claimant states in his request for review that he received this decision on January 2, 1998. Under Rule 102.5(h) the claimant was presumed to have received this notice five days after it was distributed or by December 24, 1997. We have held that the deemed date is extended by state holidays and weekends to the following business day. Texas Workers' Compensation Commission Appeal No. 94702, decided July 12, 1994 (Unpublished) . The next business day after day after December 24, 1997, was December 29, 1997. Thus, the claimant was presumed to have received the hearing officer's decision on December 29, 1997. While this presumption is not irrefutable, the mere allegation of a later date of receipt without further evidence or explanation, as we have in the present case, will not overcome the presumption of receipt under Rule 102.5(h). The claimant had only 15 days or by January 13, 1998, to mail his appeal to the Commission. Instead the claimant mailed his request for review to the Commission postmarked January 16, 1998. Thus, under Section 410.169, we must find that the decision of the hearing officer is final.

Gary L. Kilgore
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge