

APPEAL NO. 040299
FILED APRIL 2, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 13, 2003. The hearing officer recites that appellant (claimant) did not appear at the hearing after having been notified of the hearing. The hearing officer, by letter dated August 18, 2003, gave claimant 10 days to contact the Texas Workers' Compensation Commission (Commission) regarding another hearing. All correspondence was sent to claimant's last listed address. The hearing officer recites that claimant did not respond to the letter and the hearing officer closed the record on September 4, 2003. After closing the record, the hearing officer issued a decision regarding the sole issue before him and determined that claimant did not have disability for the period from October 13, 2001, through January 17, 2002.¹ In a letter dated January 20, 2004, and received by the Commission on February 9, 2004, claimant appealed, contending that he did not appear at the hearing because he had been incarcerated since July 29, 2003. Claimant indicated that he now wants a hearing to determine any benefits due. The file does not contain a response from respondent (carrier).

DECISION

The appeal in this case was not timely filed and the decision and order of the hearing officer have become final. See Sections 410.169 and 410.202.

The decision of the hearing officer was forwarded to the parties by cover letter dated September 11, 2003, and distributed that same date. Claimant does not state in his appeal when he received the decision, so the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(d)) apply and claimant is deemed to have received the decision on September 16, 2003. The last day for claimant to file his appeal was Wednesday, October 8, 2003. Claimant's appeal is untimely. Section 410.169 states the decision of the hearing officer is final in the absence of a timely appeal. Determining that the appeal was not timely filed, as set forth above, we have no jurisdiction to review the hearing officer's decision.

Claimant neither appeared at the hearing, showed cause, nor gave reason to the hearing officer for his nonappearance and, consequently, presented no evidence. The hearing officer did make inquiry of claimant's whereabouts and made inquiry to ensure that notice was sent to the last address for the claimant. The parties have a duty to keep the Commission apprised of their current addresses. The Commission did not receive notice of a change of address for claimant until November 12, 2003. In any event, the appeal was not timely and the Appeals Panel does not have jurisdiction to consider an untimely appeal. Therefore, the hearing officer's decision and order have become final. Section 410.169.

¹ The hearing officer noted that, according to the benefit review conference report, the claimed period of disability was through January 17, 2002.

According to information provided by carrier, the true corporate name of the insurance carrier is **FAIRFIELD INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DENISE BLOCKBORN
12225 GREENVILLE AVENUE
DALLAS, TEXAS 75243.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge