

APPEAL NO. 052268
FILED NOVEMBER 18, 2005

The appellant's (claimant) appeal was untimely because it was filed after the time period for filing the appeal. As a result, the hearing officer's decision and order became final under Section 410.169 and the Appeals Panel does not have jurisdiction to consider the appeal.

Section 410.202(a) provides that 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 Texas Department of Insurance, Division of Workers' Compensation (Division) and shall on the same date serve a copy of the request for appeal on the other party. Section 410.202(d) provides that Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code are not included in the computation of time in which a request for an appeal or a response must be filed. 28 TEX. ADMIN. CODE § 143.3(e) (Rule 143.3(e)) 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 Division not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(e) must be complied with for an appeal to be timely. Appeals Panel Decision (APD) 041319, decided July 27, 2004.

Records of the Division reflect that the hearing officer's decision was mailed to the claimant on September 7, 2005. Pursuant to Rules 102.5(d) and 143.3(d)(1), unless the great weight of the evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days later, or on Monday September 12, 2005. Excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, the 15th day after the deemed date of receipt of September 12, 2005, was Monday, October 3, 2005, and the 20th day after the deemed date of receipt was Wednesday, October 12, 2005. The claimant's appeal was sent by facsimile transmission on October 6, 2005, and received by the Division the same day. Although the claimant states in her appeal that she received the hearing officer's decision on September 15, 2005, the mere assertion that the hearing officer's decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by Division rule. APD 041319, *supra*. Because the claimant's appeal was neither mailed nor filed on or before October 3, 2005, it was not timely filed with the Division.

Having determined that the hearing officer's decision and order have become final under Section 410.169 because a timely appeal was not filed with the Division, the Appeals Panel does not have jurisdiction to review the hearing officer's decision.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge