

## APPEAL NO. 991865

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On August 3, 1999, a contested case hearing was held. With regard to the issue before him, the hearing officer determined that respondent (claimant) was not a seasonal employee and that her average weekly wage (AWW) was \$443.62.

The appellant (self-insured) appeals, contending that claimant, a bus driver for the self-insured, drove fewer hours during the summer and that she was thus a seasonal employee and that her AWW should be adjusted accordingly. The self-insured requests that we reverse the hearing officer's decision and render a decision in its favor. Claimant responds, urging affirmance.

### DECISION

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

Records of the Texas Workers' Compensation Commission (Commission) show that the decision and order of the hearing officer was distributed on August 5, 1999, by cover letter dated that same date. Such distribution to the self-insured was to its (City) representative, via a designated box in the Commission's central office. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(b) (Rule 102.5(b)) and Rule 156.1; see *also* TWCC Advisory 93-11, dated November 4, 1993. Attached to the Commission's copy of such letter and decision is a signed receipt therefor by the self-insured's (City) representative dated August 6, 1999. Section 410.202 provides that a request for review must be filed no later than the 15th day after the decision is received by a party. In this case, the 15th day after receipt of the decision was Saturday, August 21, 1999, and applying Rules 102.3 and 102.7, the time was extended to the next business day. To be timely, the appeal must have been filed no later than Monday, August 23, 1999. For some inexplicable reason, the self-insured's jurisdictional statement states:

The decision of the Contested Case Hearing Officer was mailed on August 5, 1999 therefore, this Request for Review must be filed with the Appeals Panel on or before August 25, 1999.

We can only surmise that the self-insured incorrectly interpreted Rule 143.3(c), which requires mailing by the 15th day and receipt not later than the 20th day, or perhaps the self-insured calculated a deemed receipt. See Rule 102.5(h).

The self-insured's appeal is dated August 25, 1999, with a certificate of service of August 25, 1999, and was sent by facsimile transmission to the Commission's central office at 11:00 a.m. on August 25, 1999, and was received on that same day. (A mailed copy of the appeal is postmarked August 26, 1999, and was received August 30, 1999.) The self-

insured's appeal, not having been mailed or sent by facsimile transmission no later than Monday, August 23, 1999, is hence untimely.

The timeliness of an appeal is jurisdictional and does not have to be raised by a party to be addressed on review. Texas Workers' Compensation Commission Appeal No. 941695, decided January 27, 1995. We have held that Rule 102.5(h), which provides for a deemed date of receipt five days after the "date mailed," does not control over an earlier signed acknowledgment of receipt. Texas Workers' Compensation Commission Appeal No. 950972, decided August 7, 1995.

Based upon the absence of a timely appeal, the decision and order of the hearing officer have become final pursuant to Section 410.169.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge