

APPEAL NO. 002346

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 September 5, 2000. With regard to the issue before him, the hearing officer determined that the appellant (self-insured) is not entitled to treat the proceeds of the third-party recovery, and any future recovery, as an advance against future benefits.

The self-insured appeals, contending that it had not given a full release of its subrogation lien against the respondent (claimant) in return for \$18,000.00, and that release was not an accord and satisfaction against future recovery. The self-insured requests that we reverse the hearing officer's decision and render a decision in its favor. The claimant responds, urging affirmance.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the self-insured hand-receipted for a copy of the hearing officer's decision on September 8, 2000. Section 410.202(a) provides that a request for appeal shall be filed not later than the 15th day after the date on which the hearing officer's decision is received, which in this case was September 8, 2000. Fifteen days from that date would be Saturday, September 23, 2000. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.3(a)(3) (Rule 102.3(a)(3)), if the last day of the period is not a working day as defined in Rule 102.3(b) the period is extended to the next working day, or, in this case, Monday, September 25, 2000.

In this case, the Commission received the claimant's response on October 9, 2000, without having received an appeal. Inquiry with the self-insured indicated that the self-insured had mailed this appeal and another appeal together in an envelope at the same time. The other appeal was received and processed but did not contain any information about the instant case. The self-insured provided a receipt for certified mail showing a postmarked date of September 22, 2000, received September 26, 2000, which purported to contain both this appeal and the other appeal; however, the Commission records only show receipt of the other appeal. The self-insured subsequently sent a copy of its appeal in this case dated September 22, 2000, by facsimile transmission on November 1, 2000.

In that the appeal in this case was not filed until November 1, 2000, it was untimely filed, being after September 25, 2000.

The self-insured's appeal being untimely, the decision of the hearing officer has become final pursuant to Section 410.169.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Judy L. Stephens
Appeals Judge