

APPEAL NO. 011808
FILED SEPTEMBER 17, 2001

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 June 15, 2001. The hearing officer determined that the compensable injury of the appellant (claimant) did not extend to migraine headaches after March 17, 1995. Claimant appealed this determination on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Carrier contends that claimant's request for review was not timely filed. We find no merit in carrier's argument that claimant's appeal was not timely filed and, therefore, should not be given consideration. Pursuant to Section 410.202(a), for an appeal to be considered timely, it must be filed or mailed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994.

Commission records indicate that the hearing officer's decision and order was mailed to claimant on July 10, 2001, and was deemed received by claimant on July 15, 2001. See Rule 102.5(d). Under Section 410.202(a), 15 days from claimant's deemed date of receipt of the decision would have been August 3, 2001. Claimant's appeal is postmarked August 1, 2001, and was received by the Commission on August 3, 2001. Therefore, the appeal was timely.

We have reviewed the complained-of determination regarding extent of injury and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge