

APPEAL NO. 012448
FILED OCTOBER 31, 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 September 4, 2001. The hearing officer determined that the appellant (claimant) reached maximum medical improvement on May 24, 1996, with a seven percent impairment rating as assessed by the designated doctor.

The claimant appeals, asserting that the designated doctor's report was improper for several reasons and that the treating doctor's assessment should be adopted. The respondent (carrier) urges 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 hearing officer's decision was mailed to the claimant and the claimant's attorney on September 10, 2001, under a cover letter of the same date. The claimant, in his appeal, does not state when the hearing officer's decision was received. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), as amended on August 29, 1999, unless the great weight of the evidence indicates otherwise, the hearing officer's decision is deemed to have been received five days after it was mailed, or, in this case, on September 15, 2001.

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. Rule 143.3(c) provides that a request for appeal is presumed to have been timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and is received by the Commission not later than the 20th day after the date the hearing officer's decision is received. Section 410.202 was amended on June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Government Code in the computation of the 15-day appeal and response periods. Since the deemed receipt date was September 15, 2001, using the amended calculation method the claimant's request for review must have been mailed, or received by the Commission no later than October 5, 2001. The claimant's request for review was sent by facsimile (fax) on October 12, 2001, and received the same date. The claimant's appeal is untimely.

The claimant's request for review does recite a certificate of service to the opposing party on September 28, 2001, but there is no evidence that the appeal was sent to the Commission. The Commission received the carrier's response on October 10, 2001, and a memo indicates that the Commission called the claimant's attorney on October 12, 2001,

to inquire about whether an appeal had been filed with the Commission. The claimant's attorney then faxed the copy of the appeal.

The claimant's appeal being untimely, the decision of the hearing officer has become final. Section 410.169.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 N. ST. PAUL
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Robert W. Potts
Appeals Judge