

APPEAL NO. 013167
FILED JANUARY 30, 2002

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 November 12, 2001. The hearing officer resolved the issues before him by determining that appellant (claimant) did not sustain a compensable injury, including an alleged compensable neck and lower back injury, that arose out of and in the course and scope of employment on _____, or any other date, and that she did not have disability. Claimant appealed these determinations on sufficiency grounds. Respondent (carrier) responded, urging affirmance. Carrier filed a supplemental response in which it asserted that claimant's appeal was untimely pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)). Claimant filed a response to carrier's supplemental response asserting that her appeal was timely.

DECISION

We affirm.

We first address carrier's contention that claimant failed to file a timely appeal. Section 410.202(a) provides that "[t]o 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 division and shall on the same date serve a copy of the request for appeal on the other party." Pursuant to Section 410.202(d), for appeals filed on or after June 17, 2001, Saturdays and Sundays and holidays listed in Section 662.003, Government Code, are not included in the computation of the time in which a request for appeal under subsection (a) or a response under subsection (b) must be filed. Rule 143.3(c) provides that a request for appeal 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 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; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994.

According to Commission records, the hearing officer's decision was mailed to claimant on November 26, 2001. Claimant was deemed to have received the decision on December 1, 2001. Claimant had until December 21, 2001, to mail the request for appeal to the Commission, which was the 15th day after the date of receipt, not including Saturdays and Sundays and holidays listed in Section 662.003 of the Government Code. The envelope in which claimant's appeal was mailed to the Commission has postmarks of December 18, 2001, and December 19, 2001, stamped on its face. Both of these dates are prior to the December 21, 2001, deadline.

The 20th day after claimant's deemed receipt of the hearing officer's decision, not counting Saturdays and Sundays and holidays listed in Section 662.003, Government Code, was January 3, 2002, and that is the date by which the appeal had to have been received by the Commission under Rule 143.3(c). This is so because December 24, 25, 26, 2001, and January 1, 2002, are all holidays listed in the Government Code, and are therefore not counted. According to the appeals file, the Commission first received a copy of claimant's appeal on December 27, 2001. Claimant's appeal is timely.

At issue in this case is whether the hearing officer erred in determining that claimant did not sustain a compensable neck and lower back injury on _____, and that she did not have disability. We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are 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.

According to information provided by carrier, the true corporate name of the insurance carrier is **(CARRIER)** and the name and address of its registered agent for service of process is

**RL
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Terri Kay Oliver
Appeals Judge