

APPEAL NO. 020133
FILED FEBRUARY 19, 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 (CCH) was held on August 20, 2001. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) compensable injury of _____, does not include his cervical spine. The claimant appealed and the respondent (self-insured) responded. In Texas Workers' Compensation Commission Appeal No. 012311, decided November 9, 2001, the Appeals Panel remanded the case to the hearing officer to obtain compliance with Section 410.164(c) regarding the self-insured's registered agent information. The registered agent information was obtained on remand. In his decision on remand, the hearing officer made the same determination on the disputed issue as in his original decision. The claimant appealed and the self-insured responded. The self-insured contends that the claimant's appeal was not timely filed.

DECISION

The hearing officer's decision on remand is affirmed.

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 an appeal under subsection (a) or a response under subsection (b) must be filed.

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on December 14, 2001. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed. Under Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on December 19, 2001, which is the date the claimant states he received the decision. 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 Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Government Code, January 15, 2002, was the 15th day after December 19, 2001, and January 23, 2002, was the 20th day after December 19, 2001. The envelope in which the claimant's appeal was mailed to the Commission is postmarked January 15, 2002, and the appeal was received by the Commission on January 18, 2002. The claimant's appeal was timely filed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, does not include his cervical spine. The claimant testified that he was injured when he threw trash bags into a dumpster at work. The carrier accepted a compensable left shoulder injury. Conflicting evidence was presented at the CCH on the disputed issue. The claimant's treating doctor and referral doctor opined that the claimant has a cervical injury from the work incident of October 20. The doctor who examined the claimant at the carrier's request opined that the claimant does not have a cervical injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order on remand are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

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

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge