

APPEAL NO. 020459
FILED APRIL 1, 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 January 9, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, or _____, and that the claimant does not have disability. The claimant appealed on sufficiency of the evidence grounds. The respondent (carrier) replied, urging affirmance.

DECISION

The appeal in this case was not timely filed as required by Section 410.202 and therefore the decision and order of the hearing officer have become final pursuant to Section 410.169.

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, 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. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (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.

The claimant's appeal states that the decision of the hearing officer was received by the claimant on January 25, 2002. The last date for the claimant to timely file an appeal was February 15, 2002, and that appeal would have to be received by February 25, 2002, to comply with both portions of Rule 143.3(c). Although it appears from an envelope included within the appeal package that the claimant initially mailed his appeal on February 14, 2002, the envelope with that date of mailing is stamped as being returned for additional postage. When an appeal is remailed for any reason, the later postmark is considered to be the actual date of mailing. A second envelope with sufficient postage is postmarked February 25, 2002, and is stamped as being received by the Commission's Chief Clerk of Proceedings on February 28, 2002. Therefore, the appeal is untimely, since it was not mailed on or before February 15, 2002, nor received on or before February 25, 2002.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer have become final under Section 410.169.

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

**FRANK A. MONTEMARANO
5205 NORTH O'CONNOR BLVD.
IRVING, TEXAS 75039.**

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge