

APPEAL NO. 021326
FILED JULY 12, 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 February 6, 2002. The hearing officer determined that the compensable injury of _____, does not include an injury to the cervical spine in addition to the right shoulder. The appellant (claimant) appealed the hearing officer's extent-of-injury determination. The file does not contain a response from the respondent (carrier).

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 decision of the hearing officer was mailed on February 13, 2002, and is deemed received by the claimant on February 18, 2002. Under Rule 102.5(d), as amended effective August 29, 1999, unless the great weight of the evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed. Commission records show that the last date for the claimant to timely file an appeal was March 11, 2002, and that the appeal would have to be received by March 18, 2002, to comply with both portions of Rule 143.3(c). The claimant mailed his appeal on May 17, 2002, and it was received on May 23, 2002. Therefore, the appeal is untimely, since it was not mailed on or before March 11, 2002, nor received on or before March 18, 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 **EMPLOYERS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**HOWARD ORLA DUGGER
1702 NORTH COLLINS BLVD., SUITE 200
RICHARDSON, TEXAS 75080-0260.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Daniel R. Barry
Appeals Judge