

APPEAL NO. 021387
FILED JUNE 25, 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 March 27, 2002. The hearing officer determined that (1) the appellant (claimant) sustained a compensable injury on _____, and (2) the claimant did not have disability. The claimant appeals the disability determination on sufficiency of the evidence grounds. The respondent (carrier) asserts that the claimant's appeal is untimely and, in the alternative, urges affirmance of the hearing officer's decision. The hearing officer's injury determination was not appealed and is, therefore, final. Section 410.169.

DECISION

A timely appeal not having been filed, the hearing officer's decision and order have become final pursuant to Section 410.169.

Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the hearing officer's decision is deemed to have been received by the claimant five days after the date the decision was mailed by the Texas Workers' Compensation Commission (Commission). A written request for review must be filed within 15 days of the date of receipt of the hearing officer's decision, excluding Saturdays, Sundays, and holidays listed in the Texas Government Code. Section 410.202(a) and (d). Commission records indicate that the hearing officer's decision was mailed to the claimant on April 17, 2002; the claimant is deemed to have received the decision on April 22, 2002. Rule 143.3 (c) provides that a request for review shall be presumed to be timely filed if it is mailed not later than 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 of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with for an appeal to be timely filed. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994. The last date for the claimant to timely file an appeal was May 13, 2002. The appeal was postmarked May 13, 2002. However, the appeal was mailed to the wrong zip code and returned to the claimant due to an incorrect address. The appeal was sent to the correct address on May 29, 2002, by Federal Express, and is stamped as received by the Commission's Chief Clerk of Proceedings on May 30, 2002. Therefore, the appeal is untimely.

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

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

**GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Roy Warren
Appeals Judge