

APPEAL NO. 021614
FILED AUGUST 8, 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 May 24, 2002. The hearing officer resolved the disputed issue by determining that the compensable injury sustained by the appellant (claimant) on _____, does not extend to or include disc degeneration at C4-5, C5-6, and C6-7. On appeal, the claimant expresses disagreement with this determination. The respondent (carrier) contends that the claimant's appeal was not timely filed and, therefore, the Appeals Panel is without jurisdiction to give it consideration. Alternatively, the carrier urges affirmance.

DECISION

We affirm the hearing officer's decision.

Records of the Texas Workers' Compensation Commission (Commission) reflect that the hearing officer's decision was mailed to the claimant on May 30, 2002. Applying Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the claimant was deemed to have received the hearing officer's decision on June 4, 2002. Pursuant to Section 410.202(a), for an appeal to be considered timely, it must be filed or mailed within 15 days, excluding Saturdays, Sundays, and holidays listed in the Texas Government Code, of the date of receipt of the hearing officer's decision. In the present case, the deadline for the claimant to file an appeal was June 26, 2002. The claimant's appeal was faxed to, and received by, the Commission on June 26, 2002, and was, therefore, timely filed.

Whether the claimant's compensable injury included cervical disc degeneration was a factual determination for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), and resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ZURICH NORTH AMERICA** and the name and address of its registered agent for service of process is

**GARY SUDOL
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge