

APPEAL NO. 021889
FILED SEPTEMBER 16, 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 16, 2002, and again on June 20, 2002. The hearing officer determined that appellant (claimant) sustained a compensable injury on _____, and that he had disability from April 2 through November 4, 2001. The issue before the hearing officer with regard to disability was, "Did the claimant have disability from April 2 through November 4, 2001?" Claimant appealed only the inclusion of a determination regarding disability after November 5, 2001, asking the Appeals Panel to strike it. Whether claimant had disability after November 5, 2001, was not an issue before the hearing officer. Respondent (carrier) responded that claimant's appeal was not timely filed and, in the alternative, that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm as reformed.

We reject carrier's contention that claimant's appeal was untimely. 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 claimant five days after the date the decision was mailed by the Texas Workers' Compensation Commission (Commission). A written request for appeal 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. Sections 410.202(a) and (d). Commission records indicate that the hearing officer's decision was mailed to the claimant on June 27, 2002; the claimant was deemed to have received the decision on July 2, 2002. The last date for the claimant to timely file an appeal was July 24, 2002. The appeal was postmarked July 23, 2002, and was received on July 25, 2002. Therefore, the appeal was timely filed.

As noted above, there was no issue before the hearing officer regarding whether claimant had disability after November 5, 2001, and this was not tried by consent. The hearing officer found in Finding of Fact No. 5 that "[a]fter November 5, 2001, the Claimant's lack of obtaining and retaining employment at wages equivalent to his pre-injury wage was due to other factors" We strike Finding of Fact No. 5 as superfluous. As so modified, we affirm the hearing officer's decision and order.

As reformed, we affirm the hearing officer's decision and order.

According to information provided by carrier, 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.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Margaret L. Turner
Appeals Judge