

APPEAL NO. 022086
FILED SEPTEMBER 19, 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 (CCH) was held on July 11, 2002. The hearing officer determined that the respondent/cross-appellant (claimant) is entitled to supplemental income benefits (SIBs) for the third, fourth, fifth, and sixth quarters; that the parties did not stipulate to an impairment rating (IR) at the CCH held on November 30, 2000, but to the issuance of a report assigning an IR; that the appellant/cross-respondent (carrier) disputed a subsequently assigned IR of 22% in a CCH held on August 4 [sic-should be 9], 2001; that the carrier is bound by the decision and order from the August [9], 2001, CCH, unless the 22% IR is subsequently overturned through judicial action; and that the Texas Workers' Compensation Commission (Commission) retains jurisdiction of the IR issue to the extent necessary to determine if the issue has been previously determined or is properly before the Commission. The carrier has submitted an untimely request for review, complaining of the hearing officer's determinations of the SIBs entitlement issues, the finding that the parties stipulated to the existence of a report of IR, not that it was the correct IR, and that the first quarter of SIBs entitlement was determined based on an IR of 22%. The claimant appeals Finding of Fact Nos. 9 and 10 and Conclusions of Law Nos. 3 and 4, relating to the question of whether there was a stipulation of IR at the November 30, 2000, CCH. The carrier responded to the claimant's appeal, asserting it is nonsensical because the hearing officer determined the issue in the claimant's favor. The claimant also responded to the carrier's untimely appeal, urging affirmance of the SIBs determinations.

DECISION

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

Commission records show that the hearing officer's decision was mailed to the parties on July 24, 2002. The carrier's copy of the decision was picked up by the carrier's representative on July 24, 2002, from the carrier's representative box located at the Commission's main office. The carrier's stamp provides the great weight of evidence indicating actual receipt on July 24, 2002, and the carrier does not get the benefit of the "deemed receipt" date being the next working day after the decision was placed in the box. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)). Pursuant to Section 410.202 and Rule 143.3(c), an appeal is presumed to be timely if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. An appeal submitted by fax is deemed to have been sent on the day it is received. Rule 102.5(f)(1). Section 410.202(d) was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in the Texas Government Code from the computation of time in which to file an appeal.

Under the amended provision, 15 days from the carrier's actual receipt of the hearing officer's decision would have been August 14, 2002. The carrier was required to file its appeal not later than August 14, 2002, and under the rule for faxes, the appeal would have needed to be received by the Commission on August 14, 2002. The carrier's appeal is dated August 15, 2002, and was file stamped as being received by the Commission on August 15, 2002. We note that the carrier's appeal contains the statement that the decision was received by the carrier on July 26, 2002, and that the carrier believed that it had until August 16, 2002, to file a timely appeal, but that was inaccurate as proved by the carrier's stamp acknowledging receipt of the decision on July 24, 2002. The carrier's appeal was not timely filed, and we may not consider it.

As to the claimant's appeal of certain findings and conclusion, we agree with the carrier's position that the hearing officer determined the related issues in the claimant's favor. We determine that the claimant was not aggrieved by the challenged findings and conclusions and we will not further address the claimant's assertions of error.

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 **TRINITY UNIVERSAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DONALD GENE SOUTHWELL
10000 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75265.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Veronica Lopez
Appeals Judge