

APPEAL NO. 022102
FILED SEPTEMBER 23, 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 July 11, 2002. The hearing officer determined that the compensable injury sustained by the appellant (claimant) on _____, includes cervicogenic muscle contracture type headaches, but does not include depression or migraine headaches. The claimant appealed, arguing that the hearing officer erred in determining that her compensable injury does not include depression and migraine headaches, and that the hearing officer did not properly review and consider the medical evidence. The respondent (carrier) filed a response arguing that the claimant's appeal is untimely, and urging affirmance of the hearing officer's determination.

DECISION

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

Texas Workers' Compensation Commission (Commission) records show that the hearing officer's decision was mailed to the parties on July 17, 2002. In accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the claimant is deemed to have received the decision on July 22, 2002. 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 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; Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994. 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 claimant's deemed receipt of the hearing officer's decision would have been August 12, 2002. Although the claimant certifies that she delivered the appeal to the Commission on July 18, 2002, the file does not contain any physical evidence that the claimant delivered or mailed the appeal to the Commission on or before August 12, 2002. The claimant's appeal was not received by the Commission until August 15, 2002, as evidence by a stamp stating "RECEIVED OFFICE OF THE OMBUDSMAN AUG 15 2002 TEXAS WORKERS' COMPENSATION COMMISSION" and another stamp stating "RECEIVED AUG 19 2002 TWCC CHIEF CLERK OF PROCEEDINGS". Also, the carrier states that it received the claimant's appeal on August 16, 2002. Therefore, the claimant's appeal was not timely filed.

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 **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Veronica Lopez
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge