

APPEAL NO. 022312
FILED SEPTEMBER 24, 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 9, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits for the eighth and ninth quarters, and that the claimant's compensable injury does not extend to include psychological injuries. The claimant appeals, asserting that his evidence was sufficient to meet his burden of proof. The respondent (carrier) replies, urging affirmance.

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 August 7, 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 August 12, 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 the date of 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 September 4, 2002, and 20 days would have been September 11, 2002.

Although it appears from an envelope included within the appeal package that the claimant mailed his appeal initially on August 27, 2002, that envelope was misaddressed to a former Commission post office box which has not been the correct address for more than two years, and apparently returned to the claimant's attorney. The appeal was faxed to the Commission (missing the last page) on September 13, 2002, and the entire appeal package was remailed in an envelope which is postmarked September 13, 2002. The partial faxed appeal is stamped as being received by the Commission's Chief Clerk of Proceedings on September 13, 2002, and the remailed appeal is stamped as being received by the Commission's Chief Clerk of Proceedings on September 18, 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 **AMERICAN RISK FUNDING INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge