

APPEAL NO. 022550
FILED NOVEMBER 14, 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 August 28, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement on June 19, 2000, with a zero percent impairment rating as was certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the claimant's appeal was not timely filed with the Commission.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Section 410.202 was amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) 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 for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 020172, decided March 12, 2002. Rule 102.5(d) provides in pertinent part that, unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on September 5, 2002. Pursuant to Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on September 10, 2002. Although the claimant asserts in his appeal that he did not receive the hearing officer's decision until September 12, 2002, the Appeals Panel has held that when Commission records show distribution to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by Commission rule. Texas Workers' Compensation Commission Appeal No. 010379, decided March 22, 2001. The 15th day after the deemed date of receipt of September 10, 2002, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was October 2, 2002. The claimant's appeal is dated

October 3, 2002, and the envelope in which it was mailed to the Commission is postmarked October 3, 2002. Since the appeal was mailed after October 2, 2002, it was not timely filed with the Commission.

The hearing officer's decision and order have become final under Section 410.169.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION, for Reliance National Indemnity Company, an impaired carrier**, and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
T.P.C.I.G.A.
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge