

APPEAL NO. 022602
FILED NOVEMBER 25, 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 September 16, 2002. The appellant (claimant) appeals the hearing officer's determination that the claimant's _____, compensable injury does not extend to include an injury of disc herniation at L4-5 nor a disc protrusion at L5-S1. The respondent (carrier) responds, alleging that the claimant's appeal is untimely and otherwise urging affirmance. The hearing officer's determinations that the claimant's injury extended to an injury to the cervical area and that the claimant had disability beginning on December 10, 2001, and continuing through June 4, 2002, have not been appealed and have become final. Section 410.169

DECISION

Affirmed.

In its response, the carrier asserts that the claimant's appeal is untimely. The hearing officer's decision was distributed to the parties on September 19, 2002. The claimant admitted receipt of the decision on September 23, 2002. For his appeal to be timely, it had to be mailed within 15 days, and received within 20 days, of September 23, 2002. See Section 410.202(a). Pursuant to Section 410.202(d), effective for an appeal filed on or after June 17, 2001, Saturdays and Sundays and holidays listed in Section 662.003, Texas Government Code, are not included in the computation of the time in which a request for an appeal or a response must be filed. Therefore, excluding weekends and holidays, the 15th day after September 23, 2002, was Monday, October 14, 2002. The Texas Workers' Compensation Commission (Commission) received the claimant's appeal on October 14, 2002; thus, it was timely.

The claimant, a service technician, sustained a compensable injury on _____, when he was struck by a dump truck that was backing up. The claimant testified that he was taken to the company doctor and returned to work that same day; that he continued working over the next 30 days; that he eventually sought additional medical attention; and that an MRI was performed and he was diagnosed with disc defects at L4-5 and L5-S1. The hearing officer relies on the report from the designated doctor, who was assigned by the Commission for impairment rating purposes, which indicates his diagnosis of the claimant's lumbar problem is only a "sprain" and not a disc herniation at L4-5 and disc protrusion at L5-S1. The hearing officer also relies on testimony from a coworker that the truck did not hit the claimant as hard as the claimant had contended. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When

reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust and we do not find it to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the decision and order of the hearing officer are affirmed.

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 SYSTEMS
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Margaret L. Turner
Appeals Judge