

APPEAL NO. 022623
FILED DECEMBER 3, 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 11, 2002. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) did not sustain a compensable repetitive trauma injury; that the date of the claimed repetitive trauma injury is _____;¹ that the respondent/cross-appellant (carrier) is relieved of liability for the claimant's repetitive trauma injury because the claimant without good cause failed to give her employer timely notice of the repetitive trauma injury; that the carrier did not waive the right to dispute the compensability of the claimant's repetitive trauma injury; and that the claimant did not have disability. The claimant appeals, arguing that the hearing officer's findings that the claimant's repetitive motion at work was not a producing cause of her left ganglion cyst; that the claimant knew or should have known that her cervico-brachial syndrome may be related to her employment not later than _____; that the claimant trivialized her injury through December 31, 2001, and not thereafter; that the claimant did not have continuing good cause from December 31, 2001, to February 16, 2002, for not reporting her claimed injury to her employer earlier than February 16, 2002; and that the claimant's report of injury to her employer did not fairly notice more than a claimed carpal tunnel syndrome injury are supported by insufficient evidence or alternatively, are contrary to the great weight and preponderance of the evidence. The claimant additionally argues that the determinations of the hearing officer constitute legal error and should be reversed. The carrier responds, urging affirmance. The carrier filed a conditional cross-appeal.

DECISION

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

The applicable law governing this case, Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §143.3(c) (Rule 143.3(c)), requires that an appeal, to be timely, must be filed or mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Section 410.202 was amended June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. The hearing officer's decision was distributed on September 18, 2002. Pursuant to Rule 102.5(d), the claimant is deemed to have received this decision on September 23, 2002. In accordance with amended Section 410.202, the appeal was due on October 14, 2002.

¹ We note that the hearing officer, in his Statement of the Evidence, concluded that the claimant knew her condition may have been related to her employment no later than the end of _____. Since _____ only has thirty days, the hearing officer meant the claimant's date of injury was _____, rather than _____.

Both the transmittal letter and the certificate of service from the claimant are dated October 15, 2002, and the Commission received the request for review on October 15, 2002. The claimant alleges that the request for review is timely filed if it is filed on or before October 15, 2002, noting that October 14, 2002 is Columbus Day. Rule 102.3 provides that unless otherwise specified, if the last day of any period is not a working day, the period is extended to include the next day that is a working day. Rule 102.3(b) defines working day as any day, Monday through Friday, other than a national holiday as defined by Texas Government Code, Section 662.003(a) and the Friday after Thanksgiving Day, December 24th and December 26th. Columbus Day is not listed as either a national, state, or optional holiday in Section 662.003. The claimant's appeal was untimely.

The carrier's request for review was contingent upon the timely filing of a request for review by the claimant. Since the claimant's appeal was not timely, the carrier's conditional request for review will not be considered.

Thus, by operation of Section 410.169, the hearing officer's decision has become final.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge