

APPEAL NO. 022686
FILED DECEMBER 5, 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 (CCH) was held on August 21, 2002. The hearing officer resolved the disputed issues by deciding that the employee was not in the course and scope of his employment when involved in a motor vehicle accident (MVA) on _____, resulting in his death, and that the appellant, (claimant beneficiary) and (GP) are the legal beneficiaries of (decedent). The claimant beneficiary appeals, arguing that the finding that, at the time of the fatal MVA, the decedent was simply traveling to work, and not engaged in or furthering the affairs of his employer and the determination that the decedent was not in the course and scope of his employment when involved in an MVA on _____, resulting in his death, were supported by insufficient evidence, or alternatively, contrary to the great weight and preponderance of the evidence. The claimant beneficiary additionally argues that the carrier did not timely dispute the claim and that it was an abuse of discretion for the hearing officer to refuse to allow this issue at the CCH. The respondent (carrier) responds, urging affirmance and arguing that the claimant beneficiary's appeal is untimely.

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 24, 2002. Pursuant to Rule 102.5(d), the claimant is deemed to have received this decision on September 29, 2002. In accordance with amended Section 410.202, the appeal was due on October 18, 2002.

Both the transmittal letter and the certificate of service from the claimant are dated October 21, 2002, and the Commission received a faxed copy of the request for on review October 21, 2002, and received the copy sent by certified mail on October 24, 2002. The claimant alleges that the request for review is timely filed if it is filed on or before October 21, 2002, noting that October 14, 2002, is Columbus Day. However, Columbus Day is not listed as either a national, state, or optional holiday in Section

662.003. The claimant's allegation that Columbus Day extends the time for appeal past October 18, 2002 is incorrect. The claimant's appeal was untimely.

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

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** 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:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge