

APPEAL NO. 022690  
FILED DECEMBER 4, 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 September 18, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable (low back) injury on \_\_\_\_\_; that the claimant had disability from April 26, 2002, through the date of the CCH; and that the appellant (carrier) had waived the right to contest compensability of the injury by not timely contesting the injury pursuant to Section 409.021.

The carrier appealed the determinations on all the issues asserting that it had disputed the injury within 60 days and before Continental Casualty Company vs. Downs, 81 S.W.3d 803 (Tex. 2002) became final and that the claimant had not sustained his burden of proof on the injury and disability issues. The claimant responds urging affirmance.

DECISION

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

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was distributed to the parties on September 25, 2002, under a cover letter of the same date. The carrier in its appeal recites, and the record supports, that the carrier received the Decision and Order through its Austin representative on September 27, 2002. However, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)) provides in pertinent part that "[f]or purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of evidence indicates otherwise, the Commission shall deem the received date to be . . . the first working day after the date the written communication was placed in a carrier's Austin representative box . . .," which in this case was September 26, 2002. In Texas Workers' Compensation Commission Appeal No. 022086, decided September 19, 2002, a carrier copy of the decision was picked up by the carrier's representative the same day that it was placed in the carrier's Austin representative box and the Appeals Panel held that "the carrier does not get the benefit of the 'deemed receipt' date being the next working day after the decision was placed in the box." In this case the "deemed receipt" date was Thursday, September 26, 2002, a day earlier than the actual receipt date, and is the date the carrier is deemed to have received the hearing officer's Decision and Order.

Section 410.202 and Rule 143.3(c) require that an appeal, to be timely, must be filed or mailed not later than the 15th day after 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. 002018, decided September 20, 2000. Section 410.202 was amended June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Government Code in computation of the 15-day appeal period.

The deemed receipt date in this case was Thursday, September 26, 2002, and the request for review, using the above outlined method of calculation, would have to be filed by Thursday, October 17, 2002, and received by October 24, 2002. The carrier's appeal is dated and postmarked October 18, 2002, and therefore is not timely having been mailed after October 17, 2002.

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 **UNIVERSAL UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GARY SUDOL  
ZURICH NORTH AMERICA  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge