

APPEAL NO. 022743  
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 was held on September 26, 2002. The hearing officer determined that (1) the claimed injury did not occur while the appellant (claimant) was in a state of intoxication as defined by Section 401.013, from the introduction of a controlled substance, and the respondent (carrier) is not relieved from liability for compensation; and (2) the claimant had disability from April 15 through June 3, 2002. The claimant appeals the disability determination on sufficiency grounds. The carrier questions the timeliness of the claimant's appeal and, in the alternative, urges affirmance. The hearing officer's intoxication determination was not appealed and is, therefore, final. Section 410.169.

DECISION

Affirmed.

We first address the carrier's assertion that the claimant's appeal is untimely. A written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision, excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code. Section 410.202(a) and (d). Texas Workers' Compensation Commission (Commission) records indicate that the hearing officer's decision was mailed to the claimant on October 4, 2002. The claimant was deemed to have received the decision on October 9, 2002, pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)). The last date for the claimant to timely file an appeal was October 30, 2002. The claimant's appeal was stamped as received by the Commission's Chief Clerk of Proceedings on October 29, 2002. The appeal, therefore, is timely.

The hearing officer did not err in determining that the claimant had disability from April 15 through June 3, 2002. The determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Margaret L. Turner  
Appeals Judge