

APPEAL NO. 030071
FILED JANUARY 23, 2003

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 November 26, 2002. The hearing officer determined that the claimant's compensable (knee) injury sustained on _____, includes left knee osteoarthritis.

The appellant (carrier) appealed based on insufficiency of the evidence. The claimant responded, urging affirmance.

DECISION

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

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was signed for by the carrier's Austin representative on December 6, 2002. 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 Commission not later than the 20th date 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 Government Code in the computation of the 15-day appeal and response periods. Using the current calculation method, the request for review in this case had to be received by the Commission no later than Thursday, January 2, 2003.

The only request for review from the carrier was a facsimile (fax) copy dated and received January 10, 1003. Although the fax copy indicates a certificate of service to the claimant, the claimant's attorney, the Commission field office, and the Commission's central office on December 20, 2002, it appears that the carrier used an incorrect (outdated) address (Post Office box number) to file the appeal with the Appeals Panel. The carrier's appeal, having been filed after January 2, 2003, is therefore untimely.

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

**FRANK A. MONTEMARANO
5205 NORTH O'CONNOR BOULEVARD
IRVING, TEXAS 75039.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Terri Kay Oliver
Appeals Judge

Robert W. Potts
Appeals Judge