

APPEAL NO. 030357  
FILED MARCH 26, 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 December 5, 2002, with the record closing January 7, 2003. With respect to the disputed issues before him, the hearing officer determined that the appellant/cross-respondent (claimant) did not sustain any injury to any part of his body while working for the employer on \_\_\_\_\_, and that he therefore did not have resulting disability. In addition, the hearing officer determined that the respondent/cross-appellant (carrier) waived its right to contest the compensability of the injury because of its failure to timely dispute. However, the hearing officer further resolved that because the claimant was intoxicated at the time of the alleged injury, had the carrier not waived its right to dispute and had it timely contested compensability, the carrier would be relieved of liability because of the claimant's intoxication. The claimant appeals the determinations against him on sufficiency of the evidence grounds. The carrier cross-appeals on the waiver determination (in a conditional appeal), arguing that Downs<sup>1</sup> waiver does not apply to statutory defenses such as intoxication, and, in its response to the claimant's appeal, the carrier argues that the claimant's appeal was untimely and further urges that the hearing officer be affirmed in all remaining aspects of the case.

DECISION

A timely appeal not having been filed<sup>2</sup>, 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 distributed on January 10, 2003. The claimant asserted that he received the decision on January 15, 2003. 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)), require 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 day after the date of receipt of the hearing officer's decision. A party who wishes to appeal the decision and order must file a request for review not later than 15 days after the date on which such decision is received from the Commission's Division of Hearings, pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in 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 filed with or mailed to the Commission no later than Thursday, February 6, 2003, and

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<sup>1</sup> Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002).

<sup>2</sup> We again note that while the carrier filed a cross-appeal, it was contingent upon the claimant's timely filing an appeal, which he failed to do. Thus, we do not consider the cross-appeal on waiver. In addition, we observe that even with the determination of carrier waiver, the carrier is not aggrieved, as the hearing officer found no injury whatsoever and that the claimant was intoxicated at the time of the alleged injury.

received by the Commission no later than Thursday, February 13, 2003. The claimant's request for review is postmarked February 10, and it was received by the Hearings Division of the Commission on February 13, 2003. Thus, while the appeal arrived during the 20-day period, the claimant failed to prove it was timely mailed. The claimant's appeal is therefore untimely.

We observe that the claimant makes the argument that he did not receive a full copy [only the first and last pages] of the Decision and Order and has yet to receive a full copy from the Commission after alleged repeated requests. Commission records do not support the claimant's assertions that he repeatedly contacted the Commission and requested a full copy of the decision and order. Furthermore, it is clear from the claimant's appeal that he knew the request for review was "due" February 6, 2003, and that he had received the carrier's conditional appeal informing him of the general nature of the hearing officer's determination. It seems it would have behooved the claimant to file his complaint regarding the alleged incomplete decision and order prior to the time that an appeal was due, in this case February 6, 2003. He failed to do so and consequently his complaint that he has not received a complete copy of the hearing officer's decision and order is 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. Therefore, we decline to address the carrier's conditional appeal.

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

**GARY SUDOL  
9330 LBJ FREEWAY, SUITE 1200  
DALLAS, TEXAS 75243.**

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Terri Kay Oliver  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Michael B. McShane  
Appeals Panel  
Manager/Judge