

APPEAL NO. 030594
FILED APRIL 14, 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 January 15, 2003, with the record closing on January 30, 2003. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) impairment rating is 11% and that the Texas Workers' Compensation Commission (Commission) did not abuse its discretion in appointing Dr. W as the second designated doctor. The claimant appealed, and the respondent (carrier) responded.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the claimant's appeal was not timely filed with the Commission.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Section 410.202 was amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) 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 for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 020172, decided March 12, 2002. Rule 102.5(d) provides in pertinent part that, unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on February 4, 2003. Pursuant to Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on February 9, 2003. Although the claimant asserts in her appeal that she did not receive the hearing officer's decision until February 10, 2003, the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by Commission rule. See Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002. Commission records reflect that the hearing officer's decision was mailed to the claimant at her then correct address on February 4, 2003. Thus, the deemed date of receipt is February 9, 2003.

The 15th day after the deemed date of receipt of February 9, 2003, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was March 3, 2003. The postage paid sticker on the envelope in which the appeal was mailed is dated March 6, 2003. Since the claimant's appeal was mailed to the Commission after March 3, 2003, it was not timely filed with the Commission. We note that even if a February 10, 2003, received date for the hearing officer's decision is used, the appeal would still be untimely as the 15th day after receipt of the hearing officer's decision, as calculated in accordance with Section 410.202 as amended, would have been March 4, 2003.

The hearing officer's decision and order have become final under Section 410.169.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** 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.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge