

APPEAL NO. 030628
FILED APRIL 15, 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 22, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits for the third quarter. 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 Texas Workers' Compensation Commission (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 or a response. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 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 January 29, 2003. Pursuant to Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on February 3, 2003. Although the claimant asserts in her appeal that she did not receive the hearing officer's decision until February 6, 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. 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 correct address on January 29, 2003. Thus, the claimant is deemed to have received the hearing officer's decision on February 3, 2003. The 15th day after the deemed date of receipt of February 3, 2003, excluding

Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was February 25, 2003. The claimant's appeal is dated February 28, 2003, and it was sent to and received by the Commission by facsimile transmission on February 28, 2003. It was also mailed to the Commission on February 28, 2003. Since the claimant's appeal was mailed to the Commission and sent by facsimile transmission to the Commission after February 25, 2003, it was not timely filed with the Commission.

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

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

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Roy L. Warren
Appeals Judge