

APPEAL NO. 030687  
FILED APRIL 18, 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 23, 2003. The hearing officer resolved the disputed issues by determining that the appellant (claimant) sustained an injury while in the course and scope of his employment on \_\_\_\_\_; that the claimant was intoxicated at the time of the injury; and that due to the claimant's intoxication, the injury is not compensable and the claimant had no disability. The claimant appeals this decision. The appeal file contains no response from the respondent (carrier).

DECISION

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

Pursuant to Section 410.202(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)), for an appeal to be considered timely, it must be filed or mailed within 15 days and received by the Texas Workers' Compensation Commission (Commission) within 20 days, exclusive of Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code, of the date of receipt of the hearing officer's decision. Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on January 28, 2003, to the address listed by the claimant at the hearing on the appearance sheet. The claimant states in his appeal that he received the hearing officer's decision and order on February 28, 2003, but gives no explanation as to the cause of its delayed arrival. We note that the envelope containing the claimant's appeal bears the same return address as the one reflected on the appearance sheet with one notable difference; although the claimant did not list an apartment number on the appearance sheet, the return address on the envelope containing the appeal includes an apartment number.

In Texas Workers' Compensation Commission Appeal No. 94117, decided March 3, 1994, we stated "[w]here Commission records show distribution on a particular day to the address confirmed by the claimant as being accurate, a mere statement that the decision was not received in the mail is not sufficient to extend the date of receipt past the deemed date of [receipt established by Rule 102.5(h)]." Consequently, given that that the decision and order was sent to the address given by the claimant at the hearing, the claimant's unexplained statement that he did not receive the Decision and Order until February 28, 2003, is insufficient to extend the period for filing a timely appeal.

Applying Rule 102.5(d) and Section 410.202, the claimant was deemed to have received the hearing officer's decision on February 2, 2003, and the deadline for the claimant to file an appeal was February 24, 2003. The envelope containing the

claimant's appeal reflects that it was mailed on March 11, 2003, and it was received by the Commission on March 18, 2003. Because the claimant's appeal was neither timely filed nor received by the Commission, the hearing officer's decision and order have become final pursuant to Section 410.169 and Rule 142.16(f).

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

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Edward Vilano  
Appeals Judge