

APPEAL NO. 030971  
FILED MAY 21, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A remand contested case hearing was held on March 17, 2003. The Appeals Panel had remanded the case by our decision in Texas Workers' Compensation Commission Appeal No. 022666, decided November 27, 2002, for the hearing officer to forward the designated doctor's report back to the designated doctor for recalculations of the impairment rating (IR) because errors had been made in the original calculations of the IR. We suggested that the hearing officer request specific separate ratings which did and did not include the appellant's (claimant) neck, as we understood that there had been a district court decision that the neck was not part of the compensable injury, but the time frame for appeal of that decision had not yet elapsed.

The hearing officer wrote to the designated doctor on December 17, 2002, asking for her recalculation of the IR. By March 4, 2003, the hearing officer learned from the designated doctor that she had quit practicing as a doctor and was no longer available to serve as the designated doctor. The hearing officer explained this to the attorneys for the parties. The parties stipulated that the compensable injury did not include the neck. At this point, the hearing officer decided that he could make the necessary mathematical corrections to the IR, and that it would not be necessary to select a new designated doctor. He determined that the claimant reached maximum medical improvement on November 11, 2000, and that his IR is 14%. The claimant appeals these determinations, arguing that another designated doctor should have been appointed to determine the IR. The claimant did not attend the hearing on March 17, 2003, although his attorney was present and waived the claimant's appearance. The claimant now asserts that he should have been present, but did not receive notice from either his attorney or from the Texas Workers' Compensation Commission (Commission) of the hearing. He also asserts that he did not receive the Decision and Order until April 16, 2003, and was told he had 20 days to appeal. The respondent (carrier) responds, asserting first that the appeal is untimely, and otherwise urging affirmance.

DECISION

The appeal in this case was not timely filed and the decision and order of the hearing officer have become final. Section 410.169.

A request for appeal is timely if it is mailed on or before the 15th day after the appellant receives the decision and if it is received by the Commission on or before the 20th day after the date of receipt of the decision. Section 410.202; Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)). Records of the Commission show that the hearing officer's decision was mailed to the claimant's correct address on March 21, 2003. Under Rule 102.5(d), unless the great weight of evidence indicates

otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed; in this case deemed receipt is March 26, 2003. Although the claimant asserts in his appeal that he did not receive the decision until April 16, 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.

The 15th day after the deemed date of receipt of March 26, 2003, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was April 16, 2003. The claimant's appeal was faxed to the Commission on April 23, 2003, and the faxed copy was received on that same date. The mailed copy is postmarked April 23, 2003, and was received on April 28, 2003. Since the claimant's appeal was transmitted to the Commission after April 16, 2003, it was not timely filed with the Commission.

The decision of the hearing officer is final in the absence of a timely appeal. Section 410.169. Determining that the appeal was not timely filed, as set forth above, we have no jurisdiction to review the hearing officer's decision.

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

**LINDA LEWIS  
1600 NORTH COLLINS BOULEVARD, SUITE 300  
RICHARDSON, TEXAS 75080.**

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Michael B. McShane  
Appeals Panel  
Manager/Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Edward Vilano  
Appeals Judge