

APPEAL NO. 030979
FILED JUNE 9, 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 March 12, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury; that the claimant did not have disability resulting from any injury sustained on _____; that because there is no compensable injury there can be no disability; and that the respondent (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001. The claimant appealed, asserting disagreement with the hearing officer's decision. The carrier responded, asserting that the claimant's appeal is untimely and otherwise urging affirmance.

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. 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 5 days after the date mailed.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on March 19, 2003. Pursuant to Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on March 24, 2003. Although the claimant asserts in his appeal that he did not receive the hearing officer's decision until March 27, 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 24, 2003, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was April 14, 2003. The postage paid sticker on the envelope in which the appeal was mailed is dated April 17, 2003, and was not received until April 22, 2003. Since the claimant's appeal was mailed to the Commission after April 14, 2003, it was not timely filed with the Commission.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the hearing officer's decision and order have become final pursuant to Section 410.169.

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

**JAMES H. MOODY II
901 MAIN STREET
DALLAS, TEXAS 75202.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Robert W. Potts
Appeals Judge