

APPEAL NO. 031017  
FILED MAY 28, 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 14, 2003. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) compensable injury of \_\_\_\_\_, does not include an injury to the lumbar spine and that he did not have disability. The claimant appealed on sufficiency of the evidence grounds. The respondent (carrier) responded, 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 five days after the date mailed.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on March 21, 2003. However, we note that the claimant attached to his appeal a copy of the Commission's envelope that contained an affixed metered postage sticker of March 21, 2003, and a separate post office date stamp of March 24, 2003. In light of this evidence, we will consider that the hearing officer's decision was mailed to the claimant on March 24, 2003, rather than March 21, 2003. Pursuant to Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on March 29, 2003. The 15th day after the deemed date of receipt of March 29, 2003, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was April 22, 2003. The postage paid sticker on the envelope in which the appeal was mailed is dated April 24, 2003. Since the claimant's appeal was

mailed to the Commission after April 22, 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 **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PRENTICE-HALL CORPORATION SYSTEM, INC.  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Veronica Lopez  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Margaret L. Turner  
Appeals Judge