

APPEAL NO. 031057
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 contested case hearing was held on March 24, 2003. The hearing officer determined that: (1) the appellant (claimant) did not sustain an injury while in the course and scope of employment on _____; (2) the claimant did not have disability; and (3) the respondent (carrier) is relieved from liability under Section 409.002 because the claimant failed to timely notify his employer of an injury pursuant to Section 409.001. The claimant appeals these determinations on sufficiency of the evidence grounds. The carrier responds, asserting that the claimant's appeal was not timely filed and, in the alternative, urging affirmance.

DECISION

Affirmed.

We first address the carrier's assertion that the claimant's appeal is untimely. A written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision, excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code. Section 410.202(a) and (d). Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 143.3(c) (Rule 143.3(c)) an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Commission records indicate that the hearing officer's decision was mailed to the claimant on April 1, 2003. The claimant was deemed to have received the decision on April 6, 2003. Rule 102.5(d). Accordingly, the last date for the claimant to timely file an appeal was April 29, 2003. The appeal was postmarked on April 25, 2003, and is stamped as received by the Commission's Chief Clerk of Proceedings on April 29, 2003. The appeal is, therefore, timely.

The hearing officer did not err in making the complained-of determinations. The injury and notice determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer considered the evidence and determined that the claimant did not sustain an injury at work on _____, and did not give notice of the claimed injury within 30 days after the alleged date of injury. In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Because the

claimant did not sustain a compensable injury, the hearing officer properly concluded that he did not have disability. Section 401.011(16).

We affirm the hearing officer's decision and order.

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.**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Veronica Lopez
Appeals Judge