

APPEAL NO. 031442
FILED JULY 23, 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 April 24, 2003. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) compensable injury of _____, does not extend to and include the lumbar spine. The claimant appealed, contending that she proved that her lumbar spine is part of her compensable injury. The respondent (carrier) responded, requesting affirmance and asserting that the claimant's request for appeal was not timely filed.

DECISION

Affirmed.

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 or a response. 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 appeal 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 Texas Workers' Compensation Commission (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.

In the instant case, records of the Commission reflect that the hearing officer's decision was mailed to the claimant on May 5, 2003. Pursuant to Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on May 10, 2003, which is also the date the claimant states that she received the hearing officer's decision. Excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, the 15th day after the claimant's date of receipt of the hearing officer's decision was June 2, 2003, and the 20th day was June 9, 2003. The envelope in which the claimant's request for appeal was mailed to the Commission reflects that it was mailed on June 2, 2003, and the request for appeal was date stamped as having been received by the Commission on June 6, 2003. The claimant's appeal was timely filed.

It is undisputed that the claimant sustained a compensable injury when she fell at work. Whether the compensable injury includes an injury to the claimant's lumbar spine presented a fact question for the hearing officer to resolve from the evidence presented. The claimant had the burden to prove that her compensable injury includes an injury to her lumbar spine. The parties presented conflicting evidence on the disputed issue, including conflicting medical opinions regarding the extent of the claimant's compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision that the claimant's compensable injury does not extend to include an injury to her lumbar spine is supported by sufficient evidence, and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W. 2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge