

APPEAL NO. 031738
FILED AUGUST 18, 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 February 19, 2003. The hearing officer decided that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth, seventh, and eighth quarters, and that the claimant permanently lost entitlement to SIBs pursuant to Section 408.146(c). The claimant appeals, contending that he is unable to work. The respondent (carrier) responds, asserting that the claimant's request for appeal was not timely filed with the Texas Workers' Compensation Commission (Commission), and that the evidence supports the hearing officer's decision.

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 Commission.

Section 410.202(a) states: "To 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 February 28, 2003. Pursuant to Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on March 5, 2003. Although the claimant asserts in his appeal that he did not receive the hearing officer's decision until June 18, 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. Texas Workers' Compensation Commission Appeal No. 010379, decided March

22, 2001. The cover letter transmitting the hearing officer's decision to the claimant contains the same address for the claimant that is shown as the claimant's return address on the envelope in which he mailed his request for appeal to the Commission. The 15th day after the deemed date of receipt of March 5, 2003, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was March 26, 2003, and the 20th day was April 2, 2003. The envelope in which the claimant's request for appeal was mailed to the Commission contains a United States Postal Service postage paid stamp dated June 27, 2003, and the request for appeal was received by the Commission on June 30, 2003. Since the request for appeal was mailed after March 26, 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 **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge