

APPEAL NO. 031867  
FILED SEPTEMBER 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 June 11, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable occupational disease injury with a date of injury of \_\_\_\_\_, and that the claimant did not have disability. The claimant submitted an untimely request for review, complaining of the hearing officer's determinations of no compensable injury and no disability. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

The claimant's appeal not having been timely filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Texas Workers' Compensation Commission (Commission) records show that the hearing officer's decision was mailed to the parties on June 18, 2002. The claimant's appeal recites that the claimant's representative received a copy of the decision on June 20, 2002. In Texas Workers' Compensation Commission Appeal No. 941144, decided October 4, 1994, the Appeals Panel held that since the 1989 Act gives the party, not the attorney, the right to appeal, and provides the party, not the attorney, with 15 days in which to file an appeal. The operative date for determining the timeliness of the appeal is the date the claimant, not his or her attorney, received the hearing officer's decision. There is no evidence in the record when the claimant actually received the hearing officer's decision. In such cases the Appeals Panel applies the deemed receipt rule. See Texas Workers' Compensation Commission Appeal No. 010238, decided March 20, 2001. Applying Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)) and Section 410.202, the claimant was deemed to have received the hearing officer's decision five days after it was mailed, or in this case, on June 23, 2003.

Pursuant to Section 410.202 and Rule 143.3(c), an appeal is presumed to be timely 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 Commission not later than the 20th day after the date of receipt of the hearing officer's decision. An appeal submitted by facsimile transmission (fax) is deemed to have been sent on the day it is received. Rule 102.5(f)(1). Section 410.202(d) was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Under the amended provision, 15 days from the claimant's receipt of the hearing officer's decision would have been July 15, 2003. The claimant was required to file her appeal not later than July 15, 2003, and under the rule for faxes, the appeal would have needed to be received by the Commission on July 15, 2003. The claimant's faxed appeal, while dated July 9, 2003, was file stamped as being received by the Commission on July 21,

2003. The claimant's appeal received by certified mail is also dated July 9, 2003, mailed on July 30, 2003, and was file stamped as being received by the Commission on August 4, 2003. The claimant's appeal being received after July 15, 2003, was not timely filed by either fax or certified mail, and may not be considered.

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

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

**PARKER W. RUSH  
1445 ROSS AVENUE, SUITE 4200  
DALLAS, TEXAS 75202-2812.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge