

APPEAL NO. 032126
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 (CCH) was held on November 6 and 21, 2002. The hearing officer decided that the appellant's (claimant herein) compensable injury of _____, includes the lumbar spine and left knee internal derangement. The hearing officer also determined that the claimant's impairment rating (IR) was 30%. The claimant files a request for review arguing the hearing officer should have found that his injury extended to additional body parts and conditions and that his IR should be 52%. The respondent (carrier herein) replies that the decision of the hearing officer should be affirmed.

DECISION

Because we find that jurisdiction has lapsed prior to an appeal reaching the Appeals Panel, the decision and order of the hearing officer have become final pursuant to Section 410.204.

Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 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. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § Rule 143.3(c) (Rule 143.3(c)) provides that 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. Both portions of Rule 143.3(c) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

Commission records indicate that the hearing officer's decision was mailed to the claimant on March 26, 2003. Under Rule 102.5(d), unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed; in this case deemed receipt is March 31, 2003. The claimant states in his request for review that he actually received the decision of the hearing officer on March 31, 2003. Thus the appeal needed to be mailed no later than April 23, 2003, the 15th day from the deemed date of receipt¹ and received by the Commission by Wednesday, April 30, 2003. The claimant's appeal is date-stamped as received by the Commission on August 13, 2003.

¹ This takes into account the fact that April 18, 2003, was an optional holiday and April 21, 2003, was a state holiday, both of which are excluded from the computation because they are listed in Section 662.003 of the Texas Government Code.

The claimant argues in the cover letter transmitting his appeal that a copy of his request for review was earlier filed with the Commission's San Antonio field office and transmitted to the Appeals Panel by interoffice mail. The appeal file does include notations indicating that this was the case. However, these notations do not indicate when the claimant's request for review was received in the San Antonio field office. The (carrier) also filed its response to the claimant's request for review on May 8, 2003, and in its response states that it received an incomplete copy of the claimant's request for review on April 18, 2003, and later obtained a complete copy.

We really have insufficient information to determine whether or not the claimant's appeal was timely received by the San Antonio field office or why if it was not received in the central office before August 13, 2003. However, we do know that Section 410.204 provides that a decision of the Appeals Panel must be issued not later than the 30th day after the date on which the written response to a request for review is filed. Therefore, the last day on which the Appeals Panel could have rendered a decision upon the claimant's request for review was Monday, June 9, 2003, and the Appeals Panel no longer had jurisdiction over the appeal after that date. See Texas Workers' Compensation Commission Appeal No. 951839, decided November 10, 1995.

As the 1989 Act does not extend our jurisdiction under the circumstances of the present case, the decision and order of the hearing officer have become final.

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

**CT CORPORATION SYSTEMS
350 NORTH SAINT PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge