

APPEAL NO. 032297  
FILED OCTOBER 3, 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 20, 2003. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury in the form of an occupational disease with a date of the claimed injury of \_\_\_\_\_.

The claimant appealed on a sufficiency of the evidence basis. The respondent (carrier) responded that the claimant's appeal was untimely and otherwise urges affirmance.

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 Texas Workers' Compensation Commission (Commission).

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 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 March 27, 2003. Pursuant to Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on April 1, 2003. The claimant, in his appeal, only asserts that he received the hearing officer's decision and order "on April 03." The deemed date of receipt is April 1, 2003.

The 15th day after the deemed date of receipt of April 1, 2003, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code was April 24, 2003. The claimant's appeal was sent to the

Commission by facsimile transmission on September 3, 2003, and was received by the Commission that same date. In that the claimant's appeal was not filed or mailed to the Commission by April 24, 2003, it was not timely.

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 **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge