

APPEAL NO. 032335
FILED OCTOBER 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 July 21, 2003. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not include the diagnosed conditions of cystocele, prolapsed bladder or urinary incontinence, but does include an internal disc disruption at L4-5 and L5-S1.

The respondent (carrier) filed a contingent appeal based on the contingency that the claimant files an appeal that invokes the jurisdiction of the Appeals Panel. The claimant filed "a rebuttal appeal in reference to Carrier's Conditional Request for Review." On the merits each party appeals the determination adverse to their position.

DECISION

A timely appeal by the claimant not having been filed, the jurisdiction of the Appeals Panel has not been invoked, consequently the carrier's appeal is not considered and the decision and order of the hearing officer have become final pursuant to Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was mailed to the claimant on July 25, 2003, under a cover letter of the same date. The claimant does not indicate when she received a copy of the hearing officer's decision. We note that the return address on the envelope which contained the claimant's appeal is the same as the address to which the hearing officer's decision was sent. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), as amended August 29, 1999, unless the great weight of the evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed, or in this case on July 30, 2003.

Section 410.202(a) provides that a request for appeal shall be filed not later than the 15th day after the date on which the hearing officer's decision is received. Rule 143.3(c) provides that a request for appeal is presumed to have been timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and is received by the Commission not later than the 20th day after the date the hearing officer's decision is received. The last day for the claimant's appeal to have been timely mailed was August 20, 2003, using the calculations set out in Section 410.202(d). The envelope containing the claimant's appeal is post marked August 29, 2003, and stamped as received by the Commission on September 5, 2003. The claimant's appeal is therefore untimely, having been mailed after August 20, 2003.

The claimant's appeal being untimely the jurisdiction of the Appeals Panel has not been invoked; and the carrier's contingent request for review is withdrawn at its

request and the decision and order of the hearing officer have become final pursuant to Section 410.169.

The true corporate name of the insurance carrier is **NORTH AMERICAN SPECIALTY INSURANCE COMPANY** 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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge