

APPEAL NO. 032509  
FILED OCTOBER 28, 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 August 18, 2003. With regard to (Docket No. 1), the hearing officer determined that the compensable injury of (date of injury for Docket No. 1), does not include the diagnosed recurrent herniated disc at L5-S1. With regard to (Docket No. 2), the hearing officer determined that (1) the appellant (claimant) did not sustain a compensable injury on (date of injury for Docket No. 2); (2) respondent 2 (carrier 2) is not relieved from liability under Section 409.002, because the claimant had good cause for failing to timely notify his employer of an injury pursuant to Section 409.001; and (3) the claimant did not have disability because he did not sustain a compensable injury on (date of injury for Docket No. 2). The claimant appealed, asserting that the hearing officer applied an incorrect legal standard and that the decision is against the great weight of the evidence. The respondents urge affirmance.

DECISION

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

Texas Workers' Compensation Commission (Commission) records indicate that the hearing officer's decision was sent to the parties on August 27, 2003. The claimant asserts, in his original appeal, that he received the hearing officer's decision on August 30, 2003. The appeal includes the first page of the hearing officer's decision, which is stamped as received by the claimant's attorney on August 30, 2003. The appeal indicates that it was mailed on September 23, 2003, and is stamped as received by the Commission's Chief Clerk of Proceedings on September 29, 2003. A copy of the claimant's appeal was also faxed to the Commission after normal business hours, at 5:52 p.m., on September 22, 2003, and again at 10:31 a.m., on September 23, 2003. In a subsequent letter, dated September 23, 2003, the claimant's attorney stated:

The August 30, 2003 date stated in the original Request for Review and stamped on the first page of the CCH decision and order is in error. After I stamped the mail received on Friday August 29, I automatically set the stamp ahead one day. August 30 through September 1, 2003, was labor day weekend and my office was closed. No mail was received at the office on August 30th and the post office did not deliver on September 1st. When the mail arrived on September 2nd I began stamping it August 30, 2003 until I realized the error. A sticky note on the cover letter was supposed to remind me of this but I did not look at it until after the Request for Review was drafted and faxed.

A copy of the cover letter with a post-it note was attached.

Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), as amended effective August 29, 1999, 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. The Appeals Panel has held that, where Commission records show mailing on a particular day to the claimant's correct address, a mere statement that the decision was not received until a later date is not sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 001061, decided June 26, 2000. Additionally, the operative date for determining the timeliness of an appeal is the date upon which the claimant, not his representative, received the Commission's decision. Texas Workers' Compensation Commission Appeal No. 93775, decided October 12, 1993. The claimant was deemed to have received the hearing officer's decision on September 1, 2003.

A written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision, excluding Saturdays, Sundays, and holidays listed in the Texas Government Code. Section 410.202(a) and (d). Rule 102.3(d) provides that "[a]ny written or telephonic communications received other than during normal business hours on working days are considered received at the beginning of normal business hours on the next working day." Rule 102.3(c) established that "[n]ormal business hours in the Texas workers' compensation system are 8:00 a.m. to 5:00 p.m. Central Standard Time with the exception of the Commission's El Paso field office whose normal business hours are 8:00 a.m. to 5:00 p.m. Mountain Standard Time." Given the claimant's deemed date of receipt, the last date for the claimant to timely file an appeal was before close of business on September 22, 2003. As stated above, the claimant's earliest appeal was faxed to the Commission after normal business hours on September 22, 2003. The appeal is, therefore, untimely.

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

The true corporate name of the insurance carrier in Docket No. 1 is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

The true corporate name of the insurance carrier in Docket No. 2 is **AMERICAN INTERSTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**STEVE ROPER  
1616 SOUTH CHESTNUT STREET  
LUFKIN, TEXAS 75901.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge