

APPEAL NO. 032517
FILED NOVEMBER 10, 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 28, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement on October 10, 2002, with an impairment rating of 2%; that the claimant had disability from February 22, 2002, through February 28, 2003; and that the issue of whether or not there was a violation of the 1989 Act by the designated doctor when he received and reviewed the videotape sent by the carrier is outside the jurisdiction of the hearing officer. Initially, the claimant mailed a copy of the blue brochure of the Texas Workers' Compensation Commission (Commission) regarding "Review of Claims Disputes by the Commission's Appeals Panel" and subsequently filed a written appeal dated September 8, 2003. The respondent (carrier) responded, urging affirmance of the determinations of the hearing officer and arguing that the claimant's appeal was untimely.

DECISION

The hearing officer's decision has become final under Section 410.169 because a timely appeal has not been filed with the Commission.

The Appeals Panel has held that where a claimant files only a copy of the previously described brochure, this is not sufficient to serve as an appeal because the claimant "did not adequately state the grounds upon which review was requested nor indicate disagreement with any portion of that decision." Texas Workers' Compensation Commission Appeal No. 94973, decided September 1, 1994; Texas Workers' Compensation Commission Appeal No. 000452, decided April 13, 2000. In this case, the claimant did not indicate on the brochure the case that was being appealed or what portions of any decision he disagreed with. The filing of the brochure on September 4, 2003 (mailed August 28, 2003), did not constitute the filing of a sufficient appeal.

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 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 August 1, 2003. Pursuant to 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 or on August 6, 2003, in this instance. The record reflects that the hearing officer's decision was mailed to the claimant at the address he listed on the appearance sheet at the hearing. Thus, the appeal needed to be mailed or faxed no later than August 28, 2003, the 15th day after the deemed date of receipt. The claimant sent a written appeal dated September 8, 2003. However, the claimant's appeal is postmarked as being mailed on September 19, 2003. Section 410.202(c) discusses the form of appeals and responses. Early on, and repeatedly since, we have held that no particular form of appeal is required and that an appeal, even though terse and unartfully worded, will be considered. Texas Workers' Compensation Commission Appeal No. 91131, decided February 12, 1992; Texas Workers' Compensation Commission Appeal No. 93040, decided March 1, 1993; and cases cited therein. We have also held that appeals that lack specificity will be treated as challenges to the sufficiency of the evidence. Texas Workers' Compensation Commission Appeal No. 92081, decided April 14, 1992. We find that the appeal dated September 8, 2003, which is a written letter from the claimant is adequate in the present case to raise the issue of whether there was sufficient evidence to support the hearing officer's decision. However the appeal needed to be mailed no later than August 28, 2003, the 15th day after the deemed date of receipt. The claimant's appeal was mailed to the Commission on September 19, 2003, and is, therefore, untimely.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision is final pursuant to Section 410.169.

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

**VAN WAGNER CO.
1100 JUPITER ROAD, SUITE 121
PLANO, TEXAS 75074.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge