

APPEAL NO. 032938
FILED DECEMBER 29, 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 October 15, 2003. The hearing officer resolved the disputed issues by determining that the respondent's (claimant) compensable injury of _____, includes an injury to the left hip, and that the claimant had disability resulting from his compensable injury from March 10 through March 16, 1999, and from September 1, 2002, through January 16, 2003. The appellant (carrier) appealed, contending that the hearing officer's determination that the claimant's compensable injury includes an injury to the left hip is against the great weight and preponderance of the evidence, and that the hearing officer erred in determining that the claimant had disability from September 1, 2002, through January 16, 2003. The claimant filed a response *pro se* stating that he agrees with the hearing officer's decision. A second response, filed by an attorney on behalf of the claimant, asserts that the hearing officer was correct in determining that the compensable injury includes an injury to the left hip, but contends that the hearing officer erred in cutting off temporary income benefits as of January 16, 2003, and in not finding that the claimant had disability from September 1, 2002, through the date of the CCH.

DECISION

Affirmed.

We first consider the timeliness of the claimant's appeal of the hearing officer's disability determination, which is contained in his second response. 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 review 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 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 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 October 20, 2003. Pursuant to Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on October 25, 2003. The 15th day after the claimant's date of receipt of October 25, 2003, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was November 17, 2003. The claimant's second response, which includes the assertion of error regarding no finding of disability from January 17, 2003, through the date of the CCH, was mailed to the Commission on December 1, 2003, and was sent to the Commission by facsimile transmission on the same day. Although the second response was timely filed during the time period for filing a response (see Section 410.202(b)), it was not timely filed within the time period for filing an appeal because the second response was mailed and faxed to the Commission after November 17, 2003. Consequently, we do not consider the claimant's assertion of error regarding the period of disability determined by the hearing officer.

With regard to the carrier's appeal, which was timely filed with the Commission, the claimant had the burden to prove that his compensable injury included his left hip and that he had disability as defined by Section 401.011(16). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case on the disputed issues, the claimant's testimony and the report of the Commission required medical examination doctor support the hearing officer's determinations. We conclude that the hearing officer's decision on the disputed issues of whether the claimant's injury includes his left hip and disability are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION**, for **Reliance National Indemnity Company**, an **impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge