

APPEAL NO. 032946
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 was held on September 30, 2003. The hearing officer determined that the appellant (claimant) is not relieved of the effects of an agreement signed on July 17, 2001.

The claimant appeals, acknowledging his appeal is not timely filed but asserting good cause because he never received the hearing officer's decision. On the merits, the claimant alleges he was heavily medicated when he signed the benefit review conference agreement. The respondent (carrier) responds, urging that the claimant's appeal is untimely.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

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 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 satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

Records of the Commission indicated that the hearing officer's decision was mailed to the claimant on October 9, 2003, at the address supplied by the claimant. Pursuant to Rule 102.5(d) the claimant was deemed to have received the hearing officer's decision five days later, or on Tuesday October 14, 2003. Although the claimant asserts in his appeal that he has never received the hearing officer's decision (Dispute Resolution Information System (DRIS)) notes indicate the ombudsman read the decision to the claimant's wife on the phone on November 6, 2003), the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt (or not received at all, as in this case) is not sufficient to extend the date of receipt past the deemed date of receipt provided by Commission rule. Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002. Thus the deemed date of receipt is October 14, 2003.

With the deemed date of receipt of October 14, 2003, in accordance with amended Section 410.202, the appeal needed to be filed or mailed no later than November 4, 2003. The claimant's appeal was sent by facsimile transmission on November 10, 2003, received by the Commission the same day and thus is untimely having been filed after November 4, 2003.

As previously indicated DRIS notes indicate conversation between the claimant's wife and the ombudsman and a legislator's office and the ombudsman on November 6, 2003, but nothing in those notes establish that the claimant's appeal was timely.

The claimant's appeal being untimely, 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 **BITUMINOUS CASUALTY CORPORATION** and the name and address of its registered agent for service of process is

**GLENN CAMERON
222 WEST LAS COLINAS BOULEVARD, SUITE 1720
IRVING, TEXAS 75016-7968.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge