

APPEAL NO. 032987  
FILED JANUARY 5, 2004

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 October 14, 2003. The hearing officer determined that the compensable injury of respondent (claimant) includes major depressive disorder and panic attacks (agoraphobia). Appellant (carrier) appealed these determinations on sufficiency grounds. The file does not contain a response from claimant.

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 § 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.

Texas Workers' Compensation Commission (Commission) records do not indicate that the carrier representative signed for the hearing officer's decision. Carrier's attorney says that the decision was received on October 21, 2003. However, Rule 102.5(d) provides in pertinent part that, "[f]or purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of evidence indicates otherwise, the Commission shall deem the received date to be . . . the first working day after the date the written communication was placed in a carrier's Austin representative box . . . ." The cover letter with the hearing officer's decision is dated October 17, 2003. The next working day would have been Monday, October 20, 2003. Even though carrier's attorney did not receive the decision until October 21, 2003, carrier is deemed to have received it October 20, 2003. See Texas Workers' Compensation Commission Appeal No. 000446, decided April 12, 2000.

Therefore, the appeal needed to be mailed no later than November 10, 2003, the 15th day from the date of receipt. The appeal was postmarked November 12, 2003. Therefore, the appeal is untimely.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision is final pursuant to Section 401.169.

According to information provided by carrier, the true corporate name of the insurance carrier is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge