

APPEAL NO. 033216  
FILED JANUARY 14, 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 September 19, 2003. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) compensable injury of \_\_\_\_\_, does not extend to and include a displaced bucket handle lateral meniscus tear of the right knee. The claimant appeals the hearing officer's decision, contending that the evidence supports a finding in his favor on the disputed issue. The respondent (carrier) asserts that sufficient evidence supports the hearing officer's decision.

DECISION

The hearing officer's decision has become final under Section 410.169 because the claimant's appeal was not timely filed with the Texas Workers' Compensation Commission (Commission).

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 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. Section 410.169 provides in pertinent part that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on November 7, 2003. Under Rule 102.5(d), the deemed date of receipt of the hearing officer's decision by the claimant was November 12, 2003, which is the date the claimant states he received the hearing officer's decision. The 15th day after the claimant's date of receipt of November 12, 2003, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was December 5, 2003. The envelope in which the claimant's appeal was mailed to the Commission is postmarked December 8, 2003, and the appeal was received by the Commission on

December 11, 2003. Because the claimant's appeal was mailed to the Commission after December 5, 2003, it was not timely filed with the Commission.

The hearing officer's decision has become final under Section 410.169.

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

**LEO F. MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Edward Vilano  
Appeals Judge