

APPEAL NO. 033229
FILED JANUARY 13, 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 November 4, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____; that the claimed injury of _____, does not extend to and include the low back herniations; and that the claimant does not have disability. The claimant appealed, disputing the determinations. The respondent (carrier) responded, urging affirmance and contending that the claimant's request for review failed to state a legitimate basis for overturning or reversing the hearing officer's decision and order.

DECISION

The decision and order of the hearing officer have become final pursuant to Section 410.169.

According to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the hearing officer's decision is deemed to have been received by the claimant five days after the date the decision was mailed by the Texas Workers' Compensation Commission (Commission). Commission records indicate that the hearing officer's decision was mailed to the claimant on November 7, 2003. The claimant was deemed to have received, and in fact, acknowledged receiving the decision on November 12, 2003.

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). 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. The last day for the claimant to timely file an appeal was December 5, 2003.

The claimant's appeal was dated December 3, 2003, and the envelope in which it was mailed to the Commission is postmarked December 4, 2003. The envelope attached to the claimant's appeal indicates that it was returned to the claimant's representative due to insufficient postage. The envelope reflects that it was remailed to the Commission on December 9, 2003. The claimant's appeal was received by the Commission on December 16, 2003. We have held that when a party's appeal is

returned for insufficient postage and is remailed to the Commission, the Appeals Panel uses the postmark on the remailing to determine if the appeal was timely mailed. Texas Workers' Compensation Commission Appeal No. 010216, decided March 5, 2001. The claimant's appeal is untimely because it was remailed to the Commission after December 5, 2003, and was not received by the Commission until December 16, 2003.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer has become final under Section 410.169.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge