

APPEAL NO. 033336
FILED FEBRUARY 4, 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 (CCH) was held on November 18, 2003. The hearing officer resolved the disputed issue by determining that the respondent (claimant) did have disability from May 23, 2002, through the date of the CCH. The appellant (carrier) appeals this determination on sufficiency of the evidence grounds. The claimant responds and urges affirmance.

DECISION

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

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was signed for by the carrier's representative on November 26, 2003. We have previously held that a deemed date of receipt does not control over an earlier, signed acknowledgment of receipt. Texas Workers' Compensation Commission Appeal No. 022685, decided December 9, 2002; Texas Workers' Compensation Commission Appeal No. 012044, decided October 16, 2001. See *also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)). Therefore, receipt by the carrier is November 26, 2003, not December 1, 2003, as the carrier states. Pursuant to Section 410.202, an appeal, to be timely, must be filed or mailed not later than the 15th day after the date of receipt of the hearing officer's decision. 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 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 in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994. Section 410.202 was amended June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. In accordance with amended Section 410.202, the last day for the carrier to timely file an appeal was Friday, December 19, 2003. The carrier's appeal is postmarked December 22, 2003, and was received by the Commission on December 29, 2003.

The carrier's appeal being untimely, the decision of the hearing officer has become final. Section 410.169.

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

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

Margaret L. Turner
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge