

APPEAL NO. 033356  
FILED FEBRUARY 9, 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 17, 2003. The hearing officer determined that appellant (claimant) did not sustain an injury at work; that the date of injury would be on or about \_\_\_\_\_; that claimant does not have disability; that claimant timely reported the claimed injury; and that respondent (carrier) specifically contested compensability and did not waive the right to contest the compensability of the claimed injury. Claimant appealed only the adverse determinations regarding injury and disability on sufficiency grounds. Carrier responded that the claimant's appeal is untimely and also that the hearing officer did not err in making the complained-of determinations.

DECISION

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

Texas Workers' Compensation Commission (Commission) records indicate that the hearing officer's decision was sent to the parties on Tuesday, November 25, 2003. Claimant asserts that he received the hearing officer's decision on December 10, 2003. The appeal is dated December 29, 2003, and indicates that a copy was mailed to the Commission that same day. A copy of the claimant's appeal was also faxed to the Commission on December 30, 2003.

Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), as amended effective August 29, 1999, unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed. The Appeals Panel has held that, where Commission records show mailing on a particular day to the claimant's correct address, a mere statement that the decision was not received until a later date is not sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999. Claimant was deemed to have received the hearing officer's decision on November 30, 2003.

A written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision, excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code. Section 410.202(a) and (d). Given claimant's deemed date of receipt, the last date for the claimant to timely file an appeal was on Friday, December 19, 2003. The claimant's earliest-received appeal was the one faxed to the Commission on December 30, 2003. The appeal is, therefore, untimely.

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 pursuant to Section 410.169.

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

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge