

APPEAL NO. 040103
FILED MARCH 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 was held on December 5, 2003. The hearing officer resolved the disputed issues by deciding that "By virtue of res judicata, claimant is not entitled to benefits under the [1989 Act] for a claimed injury of _____." The claimant appealed, and the respondent (carrier) responded.

DECISION

The hearing officer's decision has become final pursuant to 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 "[to] 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 part that unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be 5 days after the date mailed. The Appeals Panel has held that a signed acknowledgment of an earlier date of receipt prevails over the deemed date of receipt provided for in Rule 102.5(d). Texas Workers' Compensation Commission Appeal No. 011135, decided June 28, 2001. The claimant states in her appeal that she received the hearing officer's decision on December 16, 2003. The 15th day after December 16, 2003, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was January 12, 2004. The envelope in which the claimant's appeal was mailed to the Commission contains a January 13, 2004, United States postage meter stamp. The Commission received the appeal on January 15, 2004. Because the claimant's appeal was mailed to the Commission after January 12, 2004, it was not timely filed with the Commission. Section 410.169 provides that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

The hearing officer's decision and order have become final under Section 410.169.

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

**CORPORATION SERVICES COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge