

APPEAL NO. 040262  
FILED MARCH 5, 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 October 30, 2003. The hearing officer determined that the appellant's (claimant) \_\_\_\_\_, compensable injury does not include disc bulges/protrusions at L4-5 and L5-S1 and alleged problems associated therewith, and that the claimant has not had disability. The claimant appeals these determinations. The respondent (carrier) asserts that the claimant's appeal was not timely filed and, therefore, should not be given consideration. Alternatively, the carrier urges affirmance of the hearing officer's decision.

DECISION

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

Pursuant to Section 410.202(a), for an appeal to be considered timely, it must be filed or mailed 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). Texas Workers' Compensation Commission (Commission) records indicate that the hearing officer's decision and order was mailed to the claimant on November 4, 2003, and was deemed received by her on November 9, 2003. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)). Under Section 410.202(a), 15 days from the claimant's deemed date of receipt of the decision would have been December 3, 2003. The claimant's appeal was received by the Commission via facsimile transmission on February 5, 2004. Therefore, the appeal was not timely filed. Although the facsimile transmission copy of the appeal indicates that the claimant initially mailed her appeal to the Commission on November 26, 2003, the Commission only received the February 5, 2004, facsimile copy.

The claimant's appeal contains a statement that "[t]he appellant, [a person who is not the claimant], received the decision on November 10, 2003." Assuming that the reference to a different claimant is merely a typographical error and the claimant is submitting that she received the appeal on November 10, 2003, the unexplained statement that she received the decision and order more than 5 days after it was mailed is insufficient to extend the period for filing a timely appeal (Texas Workers' Compensation Commission Appeal No. 94631, decided June 29, 1994, and Texas Workers' Compensation Commission Appeal No. 960346, decided March 29, 1996). Furthermore, even if timeliness were calculated based upon the claimant's stated date of receipt, the appeal would still be untimely.

Because the claimant's appeal was not timely filed, the hearing officer's decision and order have become final pursuant to Section 410.169 and Rule 142.16(f).

The true corporate name of the insurance carrier is **ZURICH AMERICAN 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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Chris Cowan  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Margaret L. Turner  
Appeals Judge