

APPEAL NO. 040599
FILED MAY 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 February 19, 2004. With respect to the issues before her, the hearing officer determined that the respondent/cross-appellant (claimant) had disability from June 25, 2002, through July 23, 2003, and that she had good cause for her failure to attend a required medical examination (RME) scheduled for March 17, 2003, thus, the appellant/cross-respondent (self-insured) is liable for temporary income benefits (TIBs) from March 17, 2003, to July 23, 2003. In its appeal, the self-insured challenges the hearing officer's determinations that the claimant had disability for the period found and that she had good cause for failing to attend the RME appointment. In her response to the self-insured's appeal, the claimant urges affirmance.

DECISION

Affirmed.

Initially, we note that the claimant's cross-appeal was not timely filed. According to records of the Texas Workers' Compensation Commission (Commission), the hearing officer's decision was distributed to the parties on March 4, 2004. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the claimant was deemed to have received the hearing officer's decision five days after it was mailed or on March 9, 2004. In her appeal, the claimant states that she received the hearing officer's decision on March 10, 2004; however, the Appeals Panel has held that the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt. See Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002. Under 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(d) 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. Based on the March 9, 2004, date of receipt, the appeal needed to be filed no later than March 30, 2004. The claimant's appeal was faxed to the Commission on March 31, 2004, and is, therefore, untimely.

The hearing officer did not err in determining that the claimant had disability from June 25, 2002, to July 23, 2003, and that she had good cause for failing to attend the RME examination scheduled for March 17, 2003. Those issues presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence on the disputed issues and the hearing officer was acting within her province as the fact finder

in determining that the claimant had disability for the period found and that she had good cause for not attending the RME appointment because she did not receive notice of the appointment because the notice of the appointment was sent to the incorrect address. Nothing in our review of the record reveals that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Finally, we note that there may be some confusion about the language in the Decision section of the hearing officer's decision and order. That section states:

Claimant had disability from June 25, 2002 through July 23, 2003.
Claimant had good cause for failing to attend the RME appointment. [Self-insured] is liable for [TIBs] from March 17, 2003 through July 23, 2003.

The last sentence of the Decision should not be interpreted as indicating that the self-insured is only liable for TIBs for the period from March 17 to July 23, 2003. The self-insured is liable for TIBs for the entire period of disability found, namely, from June 25, 2002, to July 23, 2003. The last sentence is merely a reference to the fact that because the hearing officer determined that the claimant had good cause for failing to attend the RME, the self-insured is not permitted to suspend TIBs pursuant to Rule 130.6(c).

The hearing officer's decision and order are affirmed.

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 SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Veronica L. Ruberto
Appeals Judge