

APPEAL NO. 041253-s  
FILED JULY 21, 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 April 22, 2004. The hearing officer resolved the disputed issues by deciding that the compensable injury of \_\_\_\_\_, includes a herniation at L5-S1; that the employer did not tender a bona fide offer of employment to the respondent (claimant); and that the claimant has had disability resulting from the \_\_\_\_\_, compensable injury from July 14, 2003, continuing to the date of the CCH. The appellant (carrier) appealed, disputing the determinations of extent of injury, bona fide offer of employment, and disability. The claimant responded, urging 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.

In its appeal, the carrier states that it received the hearing officer's decision and order on May 12, 2004. However, records of the Texas Workers' Compensation Commission (Commission) show that the decision was signed for by the carrier's (City 1) representative on May 6, 2004. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 156.1(c) (Rule 156.1(c)), notice to the carrier's (City 1) representative is notice to the carrier. Therefore, the carrier received the hearing officer's decision on May 6, 2004, when its (City 1) representative received it.

Under the applicable law governing this case, Section 410.202 and Rule 143.3(e), require that 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 and received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. 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.

Using the applicable calculation method and the carrier's receipt date of May 6, 2004, the carrier's request for review must have been mailed or filed no later than Thursday, May 27, 2004. The carrier's appeal was received by the Commission's Chief Clerk of Proceedings on May 28, 2004, by facsimile transmission (fax). A copy of the appeal was subsequently received by the Commission, and the envelope in which it was mailed is postmarked May 28, 2004. The certificate of service reflects that it was not sent until May 28, 2004. Both the faxed copy and the mailed copy were one day late. The carrier's appeal is untimely as not having been mailed or filed on or before May 27, 2004.

In Texas Workers' Compensation Commission v. Harris County, 132 S.W.3d 139, (no pet.), the 14th Court of Appeals held that the carrier's appeal was timely under the provisions of Rule 102.5(d). In Harris County, *supra*, the carrier disputed that the Order reflected it was received by the (City 1) representative, despite its signed acknowledgment because the notice did not bear the Commission's date stamp showing the date it was placed in the box of the Harris County designated (City 1) representative. Rule 156.1(a) provides that each insurance carrier shall designate a person in (City 1), Travis County, Texas as its representative to the Commission, to act as agent for receiving notice from the Commission. Commission Advisory 93-11, signed November 4, 1993, provides in part that all documents and notices that are required to be provided by the Commission to carriers will be placed in the carrier's (City 1) representative box in the central office and that notice to the carrier for all purposes will be established by this notification. While the court in Harris County discussed the provisions of Rule 156.1, it does not appear that they were made aware of Advisory 93-11 or of the Commission's procedure to require signed receipt of the Decision and Order by the carrier's (City 1) representative. In the present case, both the cover letter distributing the order was dated May 6, 2004, and other Commission records indicate that the date of distribution was May 6, 2004. Further, the cover letter reflects that the case was distributed to the carrier utilizing the box number it has been assigned at the central office of the Commission.

It has been a longstanding practice of the Commission to consider notices provided in the (City 1) representative's box to be notice to the carrier for all purposes and that the dated signed acknowledgement of receipt by the carrier as well as the claimant's acknowledgement of receipt in his or her appeal, will determine the date of receipt when it is earlier than the deemed dates as set forth in Rule 102.5(d).

Rule 102.5(d) provides that for purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed; the first working day after the date the written communication was placed in a carrier's (City 1) representative box located at the Commission's main office in (City 1) as indicated by the Commission's date stamp; or the date faxed or electronically transmitted. In the instant case there was not a date stamp indicating the date the decision was placed in the box. However, it is clearly established by the record that the (City 1) representative signed acknowledging receipt of the Decision and Order on May 6, 2004. Under the facts presented it is not necessary to look to Rule 102.5 to determine the deemed date of receipt for the carrier because the evidence reflects that the carrier acknowledged actual receipt of the order prior to the deemed date provided by the Rules. Section 410.202 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. In those cases where actual date of receipt is determined to be earlier than the

deemed dates provided for by Rule 102.5, it is not necessary to apply its provisions to ascertain the date of receipt.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked, and the decision and order of the hearing officer have become final under Section 410.169.

The true corporate name of the insurance carrier is **HARTFORD CASUALTY INSURANCE COMPANY** 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.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

DISSENTING OPINION:

I respectfully dissent from the majority decision and would hold the carrier's appeal to be timely filed under the Harris County case cited in the majority decision.

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Robert W. Potts  
Appeals Judge