

APPEAL NO. 041319  
FILED JULY 27, 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 April 29, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and that the claimant has not had disability. The claimant appeals, contending that he met his burden of proof on the disputed issues. The respondent (carrier) asserts that the evidence supports the hearing officer's decision.

DECISION

The hearing officer's decision has become final under Section 410.169 because the claimant's request for 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 hearings 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(e) (Rule 143.3(e)) (formerly 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(e) 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 pertinent part that, unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed. See *also* Rule 143.3(d)(1).

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on May 5, 2004. Pursuant to Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on May 10, 2004, unless the great weight of the evidence indicates otherwise. Although the claimant states in his appeal that he received the hearing officer's decision on May 25, 2004, the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, 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 provided by Commission Rule. Texas Workers' Compensation Commission Appeal No. 010379, decided March 22, 2001. The cover letter transmitting the hearing

officer's decision to the claimant contains the same address for the claimant as the claimant provided on the sign in sheet at the hearing. The 15th day after the claimant's deemed date of receipt, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was June 1, 2004. The envelope in which the claimant mailed his appeal to the Commission contains a postage meter stamp with a date of June 3, 2004, which indicates that the claimant's appeal was not mailed to the Commission until at least June 3, 2004. The certificate of service attached to the claimant's appeal also states a date of June 3, 2004. Since the claimant's request for appeal was mailed to the Commission after June 1, 2004, it was not timely filed with the Commission.

We note that on June 25, 2004, the Director of Hearings issued an Order on Motion to Correct Clerical Error (Order), in which the hearing officer's decision was modified to reflect the correct name of the insurance carrier; however, the Order does not extend the time period for the claimant to appeal the hearing officer's decision which was mailed to him on May 5, 2004. Texas Workers' Compensation Commission Appeal No. 941442, decided December 7, 1994, and Texas Workers' Compensation Commission Appeal No. 982040, decided October 9, 1998.

The hearing officer's decision, as modified in the Order to correct the clerical error in the carrier's name, has become final under Section 410.169.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of the registered agent for service of process is

**MR. RUSSELL RAY OLIVER, PRESIDENT  
221 WEST 6TH STREET, SUITE 300  
AUSTIN, TEXAS 78701-3403.**

---

Robert W. Potts  
Appeals Judge

CONCUR:

---

Daniel R. Barry  
Appeals Judge

---

Chris Cowan  
Appeals Judge