

APPEAL NO. 041450
FILED AUGUST 3, 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 May 4, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) sustained a compensable injury on _____, and that the claimant did not have disability. The claimant appealed, disputing the disability determination. The respondent (carrier) responded, urging affirmance.

DECISION

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

Texas Workers' Compensation Commission (Commission) records show that the hearing officer's decision was mailed to the parties on May 18, 2004. There is no evidence in the record when the claimant actually received the hearing officer's decision. In such cases the Appeals Panel applies the deemed receipt rule. See Texas Workers' Compensation Commission Appeal No. 010238, decided March 20, 2001. Applying Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)) and Section 410.202, the claimant was deemed to have received the hearing officer's decision five days after it was mailed, or in this case, on May 23, 2004.

Pursuant to Section 410.202 and Rule 143.3(c), an appeal is presumed to be timely if it is 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(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. Both portions of Rule 143.3(c) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001. Under the amended provision, 15 days from the claimant's receipt of the hearing officer's decision would have been June 14, 2004. The claimant was required to file her appeal not later than June 14, 2004, the 15th day from the date of receipt. The U.S. Postal Service date stamp on the envelope transmitting the claimant's appeal is June 15, 2004, and the certificate of service attached to the appeal states that the appeal was mailed to the carrier on June 15, 2004. Thus, the appeal is untimely.

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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**COUNTY JUDGE
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge