

APPEAL NO. 041661
FILED AUGUST 23, 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 May 27, 2004. The hearing officer determined that: (1) the appellant (claimant) reached maximum medical improvement on September 3, 2003, with a zero percent impairment rating, as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission); and (2) the designated doctor was properly appointed in accordance with Section 408.0041 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5 (Rule 130.5). The claimant appeals these determinations essentially on sufficiency of the evidence grounds. The respondent (carrier) asserts that the claimant's appeal is untimely and, in the alternative, urges affirmance.

DECISION

The decision and order of the hearing officer have become final pursuant to Section 410.169.

Commission records indicate that the hearing officer's decision was mailed to the claimant on June 9, 2004. The claimant received the hearing officer's decision on June 14, 2004. The claimant's appeal is dated July 5, 2004; however, an affidavit attached to the appeal indicates that it was mailed on July 6, 2004. The affidavit provides, as follows:

I completed the enclosed Request for Appellate Review on July 5, 2004. In accordance, [sic] with the TEX. LABOR CODE ANN. § 410.202, and with due diligence, I attempted to mail the Request for Appellate Review for [claimant], Petitioner. The [United States Postal Service] was closed in observance of Independence Day, a holiday recognized by Government Code § 662.003. Furthermore, I hereby attest that no work was performed following my attempt to mail the Request on July 5, 2004.

The affidavit was signed on July 6, 2004, and mailed with the claimant's appeal.

Pursuant to Section 410.202(a), a written request for appeal must be filed not later than 15 days after receipt of the hearing officer's decision. Under Section 410.202(d), Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code, are not included in the computation of time in which a request for appeal must be filed. With regard to Independence Day, Section 662.003 of the Texas Government Code provides, in pertinent part, "A national holiday includes only the following days: the fourth day of July, 'Independence Day.'" The statute makes no provision for days of "observance," as asserted here, when the holiday falls on a weekend. Accordingly, the last date for the claimant to timely file an appeal, in this case, was Monday, July 5, 2004. The claimant failed to file his appeal by mail,

facsimile, hand-delivery, or other available means in the time required. Therefore, 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 has become final pursuant to Section 410.169.

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

**HOWARD ORLA DUGGER
1702 NORTH COLLINS BOULEVARD, SUITE 200
RICHARDSON, TEXAS 75080**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge