

APPEAL NO. 042500
FILED NOVEMBER 29, 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 August 13, 2004. The hearing officer determined that the _____, compensable injury of appellant (claimant) does not extend to or include a broad based annular fissure or a central focal disc protrusion at the L4-5 level of the lumbar spine. The hearing officer also determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. T on November 20, 2003, did not become final under the 90-day rule, but this determination is not appealed. Claimant appealed the determination regarding extent of injury on sufficiency grounds. Respondent (carrier) responded that claimant's appeal was not timely filed and that the hearing officer did not err in making his determination regarding extent of injury.

DECISION

We affirm.

Carrier asserts that claimant's appeal was not timely filed. A written request for appeal must be filed with the Texas Workers' Compensation Commission (Commission) within 15 days of the date of receipt of the hearing officer's decision, excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code. Section 410.202(a) and (d). In her appeal, claimant did not say when she received the hearing officer's decision. Commission records indicate that the hearing officer's decision was mailed to claimant on September 13, 2004. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), unless the great weight of evidence indicates otherwise, claimant is deemed to have received the hearing officer's decision 5 days after it was mailed; in this case deemed receipt is September 18, 2004. The last date for claimant to timely file an appeal was October 8, 2004, and the appeal was filed that day. The appeal is, therefore, timely.

We have reviewed the complained-of determination regarding extent of injury and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **COMMERCE AND INDUSTRY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Margaret L. Turner
Appeals Judge