

APPEAL NO. 042826
FILED DECEMBER 15, 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 September 27, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury, and that he did not have disability. The claimant appealed, disputing both the compensable injury and disability determinations. The respondent (carrier) responded, urging affirmance.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the claimant's appeal was not timely filed with the Texas Workers' Compensation Commission (Commission).

Section 410.202(a) provides that "[t]o 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." 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)) 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.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on October 7, 2004. We note that the address to which the hearing officer's decision was mailed is the same as the return address on the envelope in which the claimant's appeal was mailed. However, the claimant attached to his appeal a copy of the Commission's envelope that contained a metered postage date stamp of October 8, 2004. In light of this evidence, we will consider that the hearing officer's decision was mailed to the claimant on October 8, 2004, rather than October 7, 2004.

Pursuant to Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on October 13, 2004, which was five days after the date it was mailed to him. Although the claimant asserts in his appeal that he received the hearing officer's decision on October 16, 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. 022550, decided November 14, 2002. Pursuant to Section 410.202, as amended June 17, 2001, and Rule 143.3(e), the claimant had until November 3, 2004, to mail his request for appeal to the Commission, and the mailed request for appeal had to be received by the Commission by November 10, 2004. The postage paid sticker on the envelope in which the appeal was mailed is dated November 4, 2004. Since the claimant's appeal was mailed to the Commission after November 3, 2004, it was not timely filed with the Commission.

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 **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge