

APPEAL NO. 042830
FILED DECEMBER 17, 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 October 4, 2004. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits for the 10th quarter. The appellant (carrier) appeals, contending that the hearing officer erred in finding that the claimant attempted in good faith to obtain employment commensurate with her ability to work. The claimant requests affirmance.

DECISION

The Appeals Panel does not have jurisdiction over the appeal because it was not timely filed with the Texas Workers' Compensation Commission (Commission) and thus, the hearing officer's decision has become final under Section 410.169.

The carrier states that it received the hearing officer's decision on October 20, 2004. However, in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §§ 102.5(d) and 143.3(d)(2) (Rules 102.5(d) and 143.3(d)(2)), unless the great weight of evidence indicates otherwise, the carrier is deemed to have received the hearing officer's decision the first working day after the date the hearing officer's decision was placed in the carrier's Austin representative's box. A Commission date stamp reflects that the hearing officer's decision was placed in the carrier's Austin representative's box on Friday, October 15, 2004. The first working day after October 15, 2004, was Monday, October 18, 2004. See Rule 102.3(b). The carrier is deemed to have received the hearing officer's decision on October 18, 2004. We note that the carrier's Austin representative acknowledged receipt of the hearing officer's decision on October 18, 2004. Excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, the 15th day after the carrier's deemed date of receipt was November 8, 2004, and that is the date by which the carrier's appeal had to be filed with or mailed to the Commission under Section 410.202 and Rule 143.3. The carrier's appeal is dated November 10, 2004, and was faxed to the Commission on November 10, 2004. The carrier's request for appeal was untimely filed because it was faxed to the Commission on November 10, 2004. Rule 143.3(a)(3) provides in part that an untimely request for appeal does not invoke the jurisdiction of the Appeals Panel and will not be reviewed by the Appeals Panel. Section 410.169 provides in pertinent part that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party. The hearing officer's decision has become final under Section 410.169.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** 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.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge