

APPEAL NO. 042843
FILED DECEMBER 9, 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 October 5, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable low back and right knee injury on _____; that the claimant did not timely notify the employer of his claimed injury pursuant to Section 409.001; that the claimant did not have disability; and that the respondent (carrier) is not relieved of liability under Section 409.004.

The claimant appealed the adverse determinations on sufficiency of the evidence grounds. The carrier responded that the claimant's appeal was not timely filed and otherwise urges affirmance.

DECISION

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

Section 410.202(a) provides that to appeal the decision of a hearing officer, a party shall file a written request for appeal with the Appeals Panel no 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)) (formerly Rule 143.3(c)) 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. Rule 102.5(d) provides in pertinent part that, for purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of the evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on October 13, 2004. The cover letter to the hearing officer's decision contains the same address for the claimant as is shown as the claimant's return address on the envelope in which he mailed his appeal and as is shown on the CCH

sign in sheet. Pursuant to Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on October 18, 2004, unless the great weight of the evidence indicates otherwise. The claimant does not state when he received the decision of the hearing officer, therefore we deem the decision was received on October 18, 2004, the deemed date of receipt. The 15th day after the claimant's deemed date of receipt, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was November 8, 2004. The envelope in which the claimant mailed his appeal to the Commission contains a postage paid sticker and postmark, both dated November 9, 2004. Since the claimant's request for appeal was mailed to the Commission after November 8, 2004, it was not timely filed with the Commission. 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 and order have become final under Section 410.169.

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

**RICHARD A. MAYER
11910 GREENVILLE AVENUE, SUITE 600
DALLAS, TEXAS 75243-9332.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge