

APPEAL NO. 042871
FILED DECEMBER 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 October 7, 2004. With regard to (Docket 1), the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on (date of injury for Docket No. 1), and that the claimant did not have disability resulting from an injury sustained on (date of injury for Docket No. 1). With regard to (Docket 2), the hearing officer determined that the claimant's compensable injury of (date of injury for Docket No. 2), includes an injury to the lumbar (spine) after (date of injury for Docket No. 1). The claimant appealed the hearing officer's injury and disability determinations. Respondent 1 (carrier 1) responded, urging affirmance. The appeal file does not contain a response from Respondent 2 (carrier 2).

DECISION

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.

Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the claimant is deemed to have received the hearing officer's decision on October 18, 2004, which was five days after the date it was mailed to her. Pursuant to Section 410.202, as amended June 17, 2001, and Rule 143.3(e), the claimant had until November 8, 2004 to mail her request for appeal to the Texas Workers' Compensation Commission (Commission), and the mailed request for appeal had to be received by the Commission by November 16, 2004. The envelope in which the appeal is transmitted bears a postage meter date stamp of November 8, 2004, but also bears a United States postmark of November 9, 2004. The Appeals Panel has repeatedly held that when there is a date discrepancy between a postal meter date stamp and the postmark of the United States Postal Service (USPS) that the USPS postmark controls. Texas Workers' Compensation Commission Appeal No. 981793, decided September 15, 1998 *and cases cited therein*. Since the claimant's request for appeal was post marked 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 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 insurance carrier 1 is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701-3403.**

The true corporate name of insurance carrier 2 is **FIRE AND CASUALTY INSURANCE COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge