

APPEAL NO. 042904
FILED JANUARY 10, 2005

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 14, 2004. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) reached maximum medical improvement on April 28, 2004, and that the claimant's impairment rating is eight percent. The appellant (self-insured) appealed, arguing that the hearing officer's decision should be reversed because the great weight of the medical evidence does not exceed the weight afforded to the designated doctor's report. The appeal file does not contain a response from the claimant.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

In its appeal, the self-insured does not acknowledge the date the decision and order was received but rather states "it is presumed that the Order was received on October 25, 2004, and therefore, this appeal is due Monday, November 15, 2004, which is 15 days after October 25, 2004, without regard to weekends and holidays." Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(e) (Rule 143.3(e)), require that an appeal, to be timely, must be filed or mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Section 410.202 was amended June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

In Texas Workers' Compensation Commission v. Harris, 132 S.W.3d 139, (Tex. App.-Houston [14th Dist.] 2004, no pet.), the 14th Court of Appeals held that the self-insured's appeal was timely under the provisions of Rule 102.5(d). In Harris County, *supra*, the self-insured disputed that the Decision reflected it was received by the (City) representative, despite its signed acknowledgment, because the notice did not bear the Commission's date stamp showing the date it was placed in the box of the (County 1) designated (City) representative. Rule 156.1(a) provides that each insurance carrier shall designate a person in (City), (County 2), Texas as its representative to the Commission, to act as agent for receiving notice from the Commission. Commission Advisory 93-11, signed November 4, 1993, provides in part that all documents and notices that are required to be provided by the Commission to carriers will be placed in the carrier's (City) representative box in the central office and that notice to the carrier for all purposes will be established by this notification. While the court in the Harris County case discussed the provisions of Rule 156.1, it does not appear that they were

made aware of Advisory 93-11 or of the Commission's procedure to require signed receipt of the Decision and Order by the carrier's (City) representative. See Texas Workers' Compensation Commission Appeal No. 041253-s, decided July 21, 2004.

In the instant case, records of the Commission show that the decision was signed for by the self-insured's (City) representative on October 20, 2004. Therefore, the self-insured received the hearing officer's decision on October 20, 2004, when its (City) representative signed for it. Using the self-insured's receipt date of October 20, 2004, the self-insured's request for review should have been mailed or filed no later than November 10, 2004.

The instant case is further distinguishable from the timeliness issue decided by the 14th Court of Appeals in Harris County, *supra*. The Commission records reflect that the case was distributed to the parties on October 20, 2004, and the cover sheet bears a Commission stamp clearly identifying the date the decision was placed in the self-insured's (City) representative box on October 20, 2004. Rule 143.3(d)(2) provides that the Commission shall deem that the parties received the hearing officer's decision the first working day after the date the written communication was placed in a carrier's (City) representative box located at the Commission's main office in (City) unless the great weight of evidence indicates otherwise. Using the self-insured's receipt date of October 21, 2004, the next business day after it was placed in its (City) representative's box, the self-insured's request for review must have been mailed or filed no later than November 12, 2004.

The self-insured's appeal was received by the Commission's Chief Clerk of Proceedings on November 18, 2004, by mail. Both the cover letter and the envelope in which it was mailed reflect that it was not sent until November 15, 2004. Using either calculation method discussed above, the self-insured's request for review is late not having been mailed or filed by the 15th day after the date of receipt excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code.

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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CITY SECRETARY
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

CONCURRING OPINION:

Based on a deemed receipt date of October 21, 2004, which was the first working day after the hearing officer's decision was placed in the self-insured's (City) representative's box, the appeal had to be mailed by November 12, 2004, but was not mailed until November 15, 2004. Accordingly, the self-insured's appeal was not timely filed with the Commission. See Section 410.202(a) and Rules 102.5(d), Rule 143.3(d)(2), and Rule 143.3(e).

Robert W. Potts
Appeals Judge