

APPEAL NO. 042954  
FILED DECEMBER 22, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on October 13, 2004, the hearing officer, resolved the disputed issues by determining that the appellant (claimant) reached maximum medical improvement (MMI) on August 28, 2003, with a 0% impairment rating (IR). The claimant appeals, arguing that these determinations are contrary to the evidence. The claimant argues that the evidence established that she reached MMI on April 16, 2004, with a 10% IR. The claimant also complains that the hearing officer improperly excluded and improperly admitted certain evidence. Finally, the claimant asserts that the respondent's (carrier) attorney stayed in the hearing officer's office after the hearing for a considerable time. The carrier replies, contending that the evidence supports the decision of the hearing officer.

DECISION

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

Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(e) (Rule 143.3(e)) provides that an appeal is presumed to have been timely filed if it is 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. Both portions of Rule 143.3(e) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

The records of the Commission reflect that the decision of the hearing officer was distributed on October 19, 2004, under a cover letter of the same date. The claimant states in her request for review that she received the decision of the hearing officer on November 5, 2004. Under Rule 102.5(d), unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision 5 days after it was mailed. Also, 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. See Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002. We note that in the present case the Commission's record shows that the hearing officer's decision was mailed on October 19, 2004, to the

claimant at the same address that the claimant puts on the envelope in which she mailed her appeal as her return address. Thus, the claimant was deemed to have received the hearing officer's decision on October 24, 2004.

The claimant's appeal needed to be mailed no later than November 15, 2004, the 15th day from the date she was deemed to have received the hearing officer's decision. The claimant's request for review was sent to the Commission by U.S. mail, was postmarked November 18, 2004, and was received by the Commission on November 23, 2004. Thus, the appeal is untimely.

The claimant's appeal not having been timely filed, the decision and order of the hearing officer have become final. Section 410.169.

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

**ROBIN M. MOUNTAIN  
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300  
IRVING, TEXAS 75063.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge