

APPEAL NO. 043090  
FILED JANUARY 26, 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 September 28, 2004, with the record closing on October 25, 2004. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant) impairment rating is 20% and that Dr. K was not properly appointed as the designated doctor. The appellant (self-insured) appeals the hearing officer's determinations. The claimant requests affirmance.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the self-insured's appeal was not timely filed 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 not 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. The cover letter to the hearing officer's decision is dated November 10, 2004. The self-insured states that it received the hearing officer's decision on November 15, 2004. However, the self-insured's (City 1) representative acknowledged receipt on November 10, 2004. A date stamp on the cover letter to the decision notes that it was placed in the (City 1) representative's box on November 10, 2004. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (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 evidence indicates otherwise, the Commission shall deem the received date to be the first working day after the date the written communication was placed in a carrier's (City 1) representative's box located at the Commission's main office in (City 1) as indicated by the Commission's date stamp. See *also* Rule 143.3(d)(2) regarding deemed receipt of the hearing officer's decision the first working day after the date the written communication was placed in the carrier's (City 1) representative's box, unless the great weight of evidence indicates otherwise.

The first working day after the hearing officer's decision was placed in the self-insured's (City 1) representative's box was November 12, 2004. The 15th day after November 12, 2004, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was December 7, 2004. According to a date stamp on the appeal, it was hand delivered to and received by the Commission on

December 8, 2004. Because the self-insured's appeal was filed after December 7, 2004, it was not timely filed with the Commission. The self-insured's appeal would also be untimely filed if the 15-day time period were calculated from the date the self-insured's (City 1) representative provided a signed acknowledgment of receipt on November 10, 2004. 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.

Having determined that the hearing officer's decision and order have become final under Section 410.169 because a timely appeal was not filed with the Commission, the Appeals Panel does not have jurisdiction to review the hearing officer's decision.

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

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

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Robert W. Potts  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge