

APPEAL NO. 043207  
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 (CCH) was held on November 10, 2004. The hearing officer determined that the appellant (claimant) sustained a compensable injury on \_\_\_\_\_, and had disability from October 11 through November 4, 2003, but not otherwise.

The claimant appealed, contending that he had an additional period of disability from March 2004 to the date of the CCH. The respondent (carrier) responds, urging affirmance.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the claimant'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 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. 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 November 16, 2004. The cover letter to the hearing officer's decision contains the same address for the claimant 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 November 21, 2004, unless the great weight of the evidence indicates otherwise. The claimant's appeal does not indicate when he received the hearing officer's decision, therefore the November 21, 2004, deemed receipt date will be used to

determine timeliness. 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 Tuesday, December 14, 2004. The mailing packet in which the claimant mailed his appeal to the Commission indicates that the packet was given to an overnight courier at 7:20 p.m. on December 21, 2004, and received by the Commission on December 22, 2004. Since the claimant's request for appeal was mailed to the Commission after December 14, 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 **TRUCK INSURANCE EXCHANGE** and the name and address of its registered agent for service of process is

**FRED B. WERKENTHIN  
100 CONGRESS AVENUE  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Margaret L. Turner  
Appeals Judge