

APPEAL NO. 050015
FILED FEBRUARY 16, 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 November 30, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not have disability as a result of the injury of _____, from February 21 through November 30, 2004, and that the compensable injury of _____, does not extend to and include an L5-S1 herniation. The claimant appealed, contending that there is insufficient evidence to support the hearing officer's determinations and that the hearing officer was not fair and impartial. The respondent (carrier) responds that the evidence supports the hearing officer's decision and requests 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 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. 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 the evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed. See *also* Rule 143.3(d)(1).

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on December 8, 2004. The claimant does not state when he received the decision. The claimant is deemed to have received the decision on Monday, December 13, 2004. The 15th day after the date of receipt, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was January 4, 2005. According to a Commission date received stamp on the claimant's appeal, the appeal was hand delivered to the Commission on January 5, 2005. The claimant's appeal was not timely filed with the Commission because it was filed after January 4, 2005. 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 became 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 **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge