

APPEAL NO. 050238  
FILED MARCH 18, 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 December 16, 2004. The hearing officer resolved the disputed issues by deciding that the date of maximum medical improvement (MMI) is June 17, 2004; that the respondent's (claimant) impairment rating (IR) is 10%; and that the claimant did have disability from August 22, 2003, and continuing through June 17, 2004. The appellant (self-insured) appealed, disputing the MMI, IR, and disability determinations of the hearing officer. The self-insured argues that the hearing officer erred in denying self-insured's motion to amend the benefit review officer's report to include the failure of the claimant to challenge the initial MMI date and IR within 90 days; that the hearing officer erred in denying its objections to the admission of medical records prepared by (Mr. S); and that the hearing officer erred in holding that the claimant had disability resulting from the \_\_\_\_\_, injury for the time period stated. The claimant responded, urging affirmance.

DECISION

A timely appeal 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 self-insured does not allege in its appeal the date of its receipt of the Decision and Order of the hearing officer. Records of the Commission show that the decision of the hearing officer was distributed to the parties on January 11, 2005, and that the self-insured's (City) representative signed for the Decision and Order on January 11, 2005. Under Rule 156.1(a), each carrier shall designate an (City) representative to act as an agent for receiving notice from the Commission, and, under Rule 156.1(c), notice to the carrier's (City) representative is notice from the Commission to the carrier. Therefore, the self-insured received the decision of the hearing officer on January 11, 2005, when its (City) representative received it.

Therefore, the last date for the self-insured to timely file an appeal would be Thursday, February 3, 2005. The self-insured's appeal is dated February 7, 2005, and was received by the Commission via facsimile transmission (fax) on February 7, 2005. The appeal, having been filed after February 3, 2005, was thus untimely.

We also note that the self-insured's appeal was also untimely if the 15th day period was calculated from the deemed date of receipt. 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 the first working day after the date the written communication was placed in a carrier's (City) representative's box located at the Commission's main office in (City) as indicated by the Commission's date stamp.

A date stamp on the cover letter to the hearing officer's decision reflects that it was placed in the self-insured's (City) representative's box on January 11, 2005. The first working day after January 11, 2005, was January 12, 2005. Counting from the deemed date of receipt, January 12, 2005, the self-insured's appeal was also untimely. The 15th day after January 12, 2005, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was February 4, 2005, and as previously noted, the self-insured's appeal was dated and sent by fax on February 7, 2005.

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 certified self-insured)** and the name and address of its registered agent for service of process is

**U.S. CORPORATE SERVICES  
800 BRAZOS STREET  
AUSTIN, TEXAS 78701.**

---

Margaret L. Turner  
Appeals Judge

CONCUR:

---

Robert W. Potts  
Appeals Judge

---

Veronica L. Ruberto  
Appeals Judge