

APPEAL NO. 050271
FILED MARCH 28, 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 January 5, 2005. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) sustained a compensable neck and back injury on _____; that the compensable injury does not extend to and include vision loss; and that the claimant did not sustain any disability. Both parties appeal. The claimant disputed the hearing officer's extent-of-injury and disability determinations. The respondent/cross-appellant (carrier) appealed, disputing the hearing officer's compensable injury determination. The appeal file does not contain a response from either party to the other's appeal. The carrier's cross-appeal was untimely and cannot be considered. Since there was not a timely appeal of the determination that the claimant sustained a compensable neck and back injury on _____, that determination has become final. Section 410.169.

DECISION

Affirmed.

TIMELINESS OF CARRIER'S CROSS-APPEAL

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 indicate that the carrier's (City) representative signed for the hearing officer's decision and order on January 24, 2005. See Rule 156.1. Additionally, we note that a date stamp on the cover letter to the hearing officer's decision reflects that it was placed in the carrier's (City) representative's box on January 21, 2005. The first working day after January 21, 2005, was January 24, 2005. See Rule 143.3(d)(2). The 15th day after January 24, 2005, applying section 410.202(d) is February 14, 2005. The carrier's appeal was dated February 16, 2005, and was hand delivered to the Commission on that date. Additionally, a copy of the carrier's appeal was mailed and the envelope in which the carrier mailed its appeal to the Commission contains a postage meter stamp dated February 16, 2005. The appeal having been filed after February 14, 2005, was thus untimely.

EXTENT OF INJURY AND DISABILITY

Conflicting evidence was presented at the CCH on the issues of the extent of the claimant's compensable injury and disability. The claimant had the burden of proof on those disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations on the disputed issues regarding the extent of the compensable injury and disability are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**JOSEPH KELLY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.**

Margaret L. Turner
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Veronica L. Ruberto
Appeals Judge