

APPEAL NO. 050322
FILED MARCH 31, 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 January 6, 2005. The hearing officer resolved the disputed issue by deciding that the compensable injury of _____, does extend to include tear of the lateral cartilage or meniscus of the right knee. The appellant (carrier) appealed, arguing that the extent-of-injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. The appeal file does not contain a response from the respondent (claimant).

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 carrier alleges in its appeal that it received the Decision and Order of the hearing officer on January 26, 2005. However, records of the Commission show that the decision of the hearing officer was distributed to the parties on January 21, 2005, and that the carrier's (City) representative signed for the Decision and Order on January 24, 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 carrier received the decision of the hearing officer on January 24, 2005, when its (City) representative received it.

Therefore, the last date for the carrier to timely file an appeal would be Monday, February 14, 2005. The carrier's appeal is dated February 15, 2005, and was received by the Commission via facsimile transmission (fax) on February 15, 2005. The carrier additionally sent a copy of its appeal to the Commission by overnight delivery from a private carrier on February 15, 2005, and was date stamped as received by the

Commission on February 16, 2005. The appeal, having been filed after February 14, 2005, was thus untimely.

We also note that the carrier's appeal was also untimely if the 15-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 carrier's (City) representative's box on January 21, 2005. The first working day after January 21, 2005, was January 24, 2005. Counting from the deemed date of receipt, January 24, 2005, the carrier's appeal was also untimely. The 15th day after January 24, 2005, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was February 14, 2005, and as previously noted, the carrier's appeal was dated and sent by fax on February 15, 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 **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Margaret L. Turner
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Veronica L. Ruberto
Appeals Judge