

APPEAL NO. 050421
FILED MARCH 25, 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 20, 2005. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that he did not have disability as a result of the claimed injury of _____, from May 30, 2004, through January 20, 2005, the date of the CCH. The claimant appealed the hearing officer's determinations based on sufficiency of the evidence grounds. The respondent (carrier) responded asserting that the claimant's appeal was untimely, and that the hearing officer's decision should be affirmed.

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).

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 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.

Records of the Commission indicated that the hearing officer's decision was mailed to the claimant on January 26, 2005. Pursuant to Rule 102.5(d) the claimant was deemed to have received the hearing officer's decision 5 days later, or on January 31, 2005. Although the claimant asserts in his appeal that he received the hearing officer's decision on February 4, 2005, the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by Commission rule. Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002. Thus the deemed date of receipt is January 31, 2005.

The claimant asserts that if his appeal is late, it is the fault of the Commission, since the Commission scheduled an appointment with an ombudsman on February 24,

2005, to assist him with his appeal. The Appeals Panel has held that an ombudsman does not represent any party and is available to a claimant only to assist in the claimant's own presentation of his or her case, and that it is the responsibility of the claimant to file the appeal. See Texas Workers' Compensation Commission Appeal No. 030354, decided April 3, 2003.

With the deemed date of receipt of January 31, 2005, in accordance with amended Section 410.202, the appeal needed to be filed or mailed no later than February 22, 2005. The claimant sent his appeal both by facsimile transmission (fax) on February 24, 2005, received by the Commission that same date, and by mail, postmarked February 24, 2005, and received by the Commission on February 28, 2005. In that claimant's appeal was neither faxed nor mailed on or before February 22, 2005, the claimant's appeal was not timely filed.

Having determined that the hearing officer's decision and order have become 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 **HARTFORD INSURANCE COMPANY OF THE MIDWEST** and the name and address of its registered agent for service of process is

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

Veronica L. Ruberto
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge