

APPEAL NO. 050436
FILED APRIL 4, 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 10, 2005. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____, and that the claimant did not sustain any disability. The claimant appealed the hearing officer's determinations based on sufficiency of the evidence grounds. The respondent (carrier) responded, urging 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).

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 21, 2005. Pursuant to Rule 102.5(d) and Rule 143.3(d)(1), the claimant was deemed to have received the hearing officer's decision 5 days later, or on January 26, 2005, unless the great weight of the evidence indicates otherwise. Although the claimant asserts in her appeal that she received the hearing officer's decision on February 5, 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 26, 2005.

With the deemed date of receipt of January 26, 2005, in accordance with amended Section 410.202, the appeal needed to be filed or mailed no later than February 16, 2005. The claimant's request for review was sent to the Commission by

U.S. mail, postmarked February 22, 2005, and was received by the Commission on February 25, 2005. Thus, the appeal is untimely.

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 **FEDERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GERALD BUTLER
2001 BRYAN STREET, SUITE 3400
DALLAS, TEXAS 75201-3068.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge