

APPEAL NO. 050457
FILED APRIL 7, 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 19, 2005. The hearing officer determined that the appellant (claimant) did not sustain a compensable left ankle injury on _____; that because the claimant timely notified the employer of his claimed injury of _____, pursuant to Section 409.001, the respondent (carrier) is not relieved from liability under Section 409.002; and because the claimant did not sustain a compensable injury, the claimant did not have disability. The claimant appealed the hearing officer's determinations based on sufficiency of the evidence grounds. The carrier responded, asserting that the claimant's appeal is untimely and urging affirmance of the hearing officer's decision.

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).

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Section 410.202 was amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal or a response. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(e) (Rule 143.3(e)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) 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 complied with for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 020172, decided March 12, 2002.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on January 25, 2005. However, the claimant attached to his appeal a copy of the Commission's envelope that contained a metered postage date stamp of January 25, 2005, and another stamp states "xx 1/26/05 (City) xx." In light of this evidence, we will consider that the hearing officer's decision was mailed to the claimant on January 26, 2005, rather than January 25, 2005.

Pursuant to Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on January 31, 2005, which was five days after the date it was mailed

to him. See *also* Rule 143.3(d)(1). Although the claimant asserts in his appeal that he received the hearing officer's decision on February 7, 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.

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 by mail, postmarked February 24, 2005, and received by the Commission on February 28, 2005. In that the claimant's appeal was not mailed on or before February 22, 2005, the claimant's appeal was not timely filed.

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 **COMMERCE AND INDUSTRY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge