

APPEAL NO. 050531
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 14, 2005. The hearing officer determined that: (1) the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease with a date of injury of _____; (2) the _____, compensable injury does not extend to include post-traumatic stress disorder; and (3) because the claimant did not sustain a compensable injury, she did not have disability. The claimant appealed the hearing officer's determinations based on sufficiency of the evidence grounds. The respondent (self-insured) 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 26, 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 31, 2005, unless the great weight of evidence indicates otherwise. The claimant states in her appeal that she is deemed to have received the hearing officer's decision on January 31, 2005.

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 15th day from the date of receipt, and received by the Commission by March 1, 2005, the 20th day from the date of receipt.

The claimant's request for review was sent to the Commission by U.S. mail and was postmarked February 22, 2005. However, the Commission's date stamp on the

appeal reflects receipt by the Commission on March 10, 2005, which is outside the 20-day period following the claimant's receipt of the decision. Accordingly, the claimant's request for review is untimely and has not invoked the jurisdiction of the Appeals Panel.

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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE)

Veronica L. Ruberto
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge