

APPEAL NO. 050617
FILED APRIL 26, 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 December 30, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____, and that because the claimant did not sustain a compensable injury, the claimant did not have disability. The claimant appealed, disputing both the injury and disability determinations. The claimant additionally appeals from evidentiary rulings made by the hearing officer at the CCH. The appeal file does not contain a response from the respondent (carrier).

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 to 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)) (formerly Rule 143.3(c)) 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. 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 five days after the date mailed. See *also* Rule 143.3(d)(1).

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on January 18, 2005. Pursuant to Rules 102.5(d) and 143.3(d)(1), the claimant is deemed to have received the hearing officer's decision on January 23, 2005, unless the great weight of the evidence indicates otherwise. The 15th day after the deemed date of receipt, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was February 11, 2005. Several

copies of the claimant's appeal are included in the appeal file. Three copies of the claimant's appeal were faxed to the Commission. One copy was faxed and received on March 21, 2005, and two copies were faxed and received on March 28, 2005. Attached to the faxed copies of the appeal were four pages of a fax history report. The reports indicate that the claimant attempted on two different occasions to fax a document, purportedly his appeal, to both the Commission and the carrier on February 9, 2005. However, the fax report indicates there was a communication error and no pages were actually sent. The Commission did not receive the claimant's appeal until March 21, 2005. Since none of the appeals were filed with the Commission on or before February 11, 2005, claimant's appeal(s) are not timely.

Additionally, in an envelope postmarked March 28, 2005, the claimant filed with the Commission the information brochure published by the Commission entitled "Review of Claims Disputes by the Commission's Appeals Panel" (brochure) and signed the brochure in the sample certificate of service contained in that brochure. The brochure was received by the Commission on March 31, 2005. We note that the Appeals Panel has held that the filing of that brochure with the Commission is insufficient to constitute a request for appeal because it does not tell us how or why a claimant disagrees with a hearing officer's decision. See Texas Workers' Compensation Commission Appeal No. 94973, decided September 1, 1994. However, the brochure was neither mailed on or before the 15th day of deemed receipt nor received by the Commission not later than the 20th day after deemed receipt by the claimant. Section 410.169 provides in pertinent part that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

Determining 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge