

APPEAL NO. 050779
FILED MAY 18, 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 March 8, 2005. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) did sustain a compensable injury on _____, and that the claimant did have disability beginning September 1, 2004, and continuing through the date of the CCH. The appellant (self-insured) appealed, disputing the injury and disability determinations of the hearing officer. The self-insured contends that the claimant failed to present any evidence of a causal connection between the claimant's employment and his medical condition. The self-insured contends that the claimant's medical condition was preexisting and degenerative in nature and not related to his employment. The claimant responded, urging affirmance of the hearing officer's decision and order.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the self-insured'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. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(e) (Rule 143.3(e)) provides that a request for appeal 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. 042751, decided December 8, 2004. 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 evidence indicates otherwise, the Commission shall deem the received date to be the first working day after the date the written communication was placed in a carrier's representative's box located at the Commission's main office as indicated by the Commission date stamp. See also Rule 143.3(d)(2) regarding deemed receipt of the hearing officer's decision the first working day after the date the written communication was placed in the carrier's representative's box, unless the great weight of evidence indicates otherwise.

In its appeal, the self-insured alleges that its attorney received the decision and order of the hearing officer on March 19, 2005. However, a date stamp on the cover letter to the hearing officer's decision reflects that it was placed in the self-insured's representative's box on March 14, 2005. The first working day after March 14, 2005, was Tuesday, March 15, 2005. See Rule 143.3(d)(2) March 15, 2005, is the deemed date of receipt. The 15th day after March 15, 2005, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was Wednesday, April 6, 2005. We note that Good Friday, which fell on Friday, March 25, 2005, is listed as an optional holiday in Texas Government Code Section 662.003(c) and is thus excluded in computing the 15-day appeal period. However, Cesar Chavez Day, which is designated as an optional holiday on March 31st in Texas Government Code Section 662.013, is not listed as a holiday, optional or otherwise, in Texas Government Code Section 662.003 and is thus not excluded in computing the 15-day appeal period. The envelope in which the self-insured's appeal was mailed to the Commission contains a postage meter stamp date of April 8, 2005. Because the self-insured's appeal was mailed to the Commission after April 6, 2005, it was not timely filed with the Commission. The self-insured's appeal would also be untimely filed if the 15-day time period were calculated from the date the self-insured's representative provided a signed acknowledgment of receipt on March 15, 2005 (which was the first working day after the hearing officer's decision was placed in the self-insured's representative's box). 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.

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).

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge