

APPEAL NO. 050799
FILED MAY 3, 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 three disputed issues by deciding that the appellant (claimant) sustained a compensable injury on _____; that the compensable injury does not extend to and include a lumbar injury; and that the claimant had disability from October 4, 2004, through the date of the CCH. The claimant appeals the hearing officer's determination that the compensable injury does not extend to and include a lumbar injury. The respondent (carrier) responds that the claimant's appeal was not timely filed with the Texas Workers' Compensation Commission (Commission) and that the hearing officer's determination that the compensable injury does not extend to and include a lumbar injury is supported by the evidence. There is no appeal of the hearing officer's determinations that the claimant sustained a compensable injury and that he had disability for the time period determined by the hearing officer.

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 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 § 102.5(d) (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) which provides that the hearing officer's decision is deemed received five days after mailing, unless the great weight of the evidence indicates otherwise.

Commission records reflect that the hearing officer's decision was mailed to the claimant on March 16, 2005. Pursuant to Rules 102.5(d) and 143.3(d)(1), unless the great weight of the evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision on March 21, 2005, which is the date the claimant states he received the hearing officer's decision. The 15th day after March 21, 2005, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the

Texas Government Code, was Tuesday, April 12, 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 claimant's appeal was faxed to the Commission on April 13, 2005. Because the claimant's appeal was filed with the Commission after April 12, 2005, it was not timely filed with the Commission. 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 became 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 **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT PARNELL
8144 WALNUT HILL DRIVE, SUITE 1200
DALLAS, TEXAS 75231.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge