

APPEAL NO. 050876
FILED MAY 24, 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 6, 2005. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits for the third quarter.

The claimant appealed, contending that she had a total inability to work during the applicable qualifying period. The respondent (self-insured) responds 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).

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

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on March 24, 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 March 29, 2005, unless the great weight of the evidence indicates otherwise. The 15th day after the claimant's deemed date of receipt, excluding Saturdays and Sundays and holidays

listed in Section 662.003 of the Texas Government Code, was April 19, 2005. The claimant's appeal was sent by both facsimile transmission (fax) indicating the transmission was sent on April 20, 2005, and by mail having a postmark of April 20, 2005. The certificate of service in both documents is dated April 20, 2005. Since the claimant's request for review was mailed and faxed to the Commission after April 19, 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. Therefore, the hearing officer's decision and order have become final under Section 410.169.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge