

APPEAL NO. 051143
FILED JUNE 28, 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 April 15, 2005. The hearing officer resolved the two disputed issues by deciding that the respondent 1 (claimant) sustained a compensable injury on _____, and that the claimant had disability beginning on _____, and continuing through January 29, 2005. The appellant (carrier) appeals the hearing officer's determinations on both disputed issues. No response was received from the claimant or the respondent 2 (subclaimant).

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 because the carrier'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. 042688, decided December 1, 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 the 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 (City) representative's box located at the Commission's main office in (City) 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 (City) representative's box, unless the great weight of evidence indicates otherwise.

A date stamp on the cover letter to the hearing officer's decision reflects that it was placed in the carrier's (City) representative's box on April 26, 2005. The carrier's (City) representative provided a signed acknowledgement of receipt on April 26, 2005. The first working day after April 26, 2005, was Wednesday, April 27, 2005. The deemed date of receipt, that being the first working day after the hearing officer's decision was placed in the carrier's (City) representative's box, is the date to be used in determining the receipt date, and not the earlier signed acknowledgement of receipt by the carrier's (City) representative. Trinity Universal Insurance Company v. Day, 155 S.W.3d 337 (Tex. App.-El Paso 2004, pet. denied); Texas Workers' Compensation Commission Appeal No. 051030, decided June 20, 2005. The 15th day after April 27, 2005, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was Wednesday, May 18, 2005. The carrier's request for appeal is dated May 20, 2005, and it was faxed and mailed to the Commission on May 20, 2005. Because the request for appeal was faxed and mailed to the Commission after May 18, 2005, it was not timely filed with the Commission. Section 410.169 provides 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 **ST. PAUL FIRE AND MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
(CITY), TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge