

APPEAL NO. 051354
FILED JUNE 30, 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 April 27, 2005. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable repetitive trauma injury; that the date of the claimed injury is _____; and that because the claimant did not sustain a compensable repetitive trauma injury, she did not have disability. The claimant appealed, arguing that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. The respondent (carrier) responded, 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).

Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(e) (Rule 143.3(e)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and 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 satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

Records of the Commission indicated that the hearing officer's decision was mailed to the claimant on May 16, 2005. The cover letter to the hearing officer's decision contains the same address for the claimant as is shown as the claimant's address on the CCH sign-in sheet. The fifth day after May 16, 2005, was Saturday, May 21, 2005, which was not a working day per Rule 102.3(b). Since the fifth day of the deemed receipt period fell on a nonworking day, the hearing officer's decision is considered received on the next working day, which was Monday, May 23, 2005. Pursuant to Rule 102.5(d) and Rule 143.3(d)(1), unless the great weight of evidence indicates otherwise, the claimant was deemed to have received the hearing officer's decision 5 days later, or on Monday, May 23, 2005. See Texas Workers' Compensation Commission Appeal No. 051129-s, decided June 21, 2005.

With the deemed date of receipt of May 23, 2005, in accordance with amended Section 410.202, the appeal needed to be filed or mailed no later than June 14, 2005.

We note that Memorial Day, which fell on Monday, May 30, 2005, is listed as a national holiday in Texas Government Code Section 662.003(a) and is thus, excluded in computing the 15-day appeal period. The claimant's request for review was sent to the Commission by facsimile transmission on June 16, 2005, and was received by the Commission on June 16, 2005. Thus, the appeal is untimely.

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 **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge