

APPEAL NO. 050985
FILED JUNE 2, 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 January 26, 2005, and continued on March 21, 2005. The hearing officer resolved the disputed issues by deciding that the _____, compensable injury does not extend to include the closed head injury, cervical spine, depression and right shoulder; that the appellant (claimant) had disability from August 26 through August 31, 2003; and that the claimant did not have disability from May 7, 2004, through the date of the CCH. The claimant appealed, disputing both the extent-of-injury and adverse disability determinations. The respondent (self-insured) responded, urging affirmance, and contending that the claimant's appeal was not timely filed.

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. 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.

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.

Commission records reflect that the hearing officer's decision was mailed to the claimant on March 31, 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 April 5, 2005. The claimant does not make any representation in his appeal regarding the date he received the decision and order.

The 15th day after April 5, 2005, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was Wednesday, April 27, 2005. We note that San Jacinto Day, April 21, 2005, is listed as a state holiday in Texas Government Code Section 662.003(b) and is thus excluded in computing the 15-day appeal period. The envelope in which the claimant's request for appeal was mailed to the Commission, contains a United States Postal Service postage paid stamp dated April 28, 2005, and the request for appeal was received by the Commission on May 3, 2005. Since the request for appeal was mailed after April 27, 2005, it was not timely filed with the Commission.

The hearing officer's decision and order have become final under Section 410.169.

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