

APPEAL NO. 181509  
FILED SEPTEMBER 4, 2018

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 February 14, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the appellant (claimant) reached maximum medical improvement (MMI) on June 16, 2017; and (2) the claimant's impairment rating (IR) is zero percent. The claimant appealed, disputing the ALJ's determinations of MMI and IR. The respondent (carrier) responded, urging affirmance of the disputed MMI and IR determinations and alleges the claimant's appeal was not timely filed and should not be considered.

DECISION

Affirmed.

Section 410.202(a) provides that to appeal the decision of an ALJ, 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 ALJ is received from the Texas Department of Insurance, Division of Workers' Compensation (Division) and shall on the same date serve a copy of the request for appeal on the other party. Section 410.202(d) excludes Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code from the computation of the time in which to file an appeal or response. 28 TEX. ADMIN. CODE § 102.5(a) (Rule 102.5(a)) provides, in part, that after the Division is notified in writing that a claimant is represented by an attorney or other representative, all copies of written communications to the claimant shall thereafter be sent to the representative as well as the claimant, unless the claimant requests delivery to the representative only.

In the instant case, the claimant alleges that he never received the decision and order by mail and that the decision and order was incorrectly sent to the wrong law office. The claimant's attorney contends that he did not receive the decision and order until June 4, 2018, via facsimile (fax) transmission from the Division. The 15-day period to file an appeal does not begin until both the claimant and the claimant's attorney are deemed to have received the decision and order. *Frank v. Liberty Ins. Corp.*, 255 S.W.3d 314 (Tex. App.-Austin 2008, pet. denied). Records of the Division reflect that a copy of the ALJ's decision and order was sent to the claimant's attorney at an address different than the one listed by the claimant's attorney on the sign-in sheet at the CCH. Dispute Resolution Information System notes indicate that the claimant's attorney called the Division more than once to inquire about the status of the decision. Division records reflect that the Division faxed the decision and order to the claimant's attorney on June

4, 2018. The great weight of the evidence indicates that the claimant's attorney received a copy of the decision and order on a date after the deemed receipt provided by Rule 102.5.

The claimant's attorney acknowledges receipt of the decision and order on June 4, 2018. The claimant's appeal was filed on June 22, 2018, which was within 15 days of the stated date of receipt of the decision and order by the claimant's attorney. Therefore, we accept the claimant's appeal as timely.

#### **MMI/IR**

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ.). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951).

The ALJ's determination that the claimant reached MMI on June 16, 2017, is supported by sufficient evidence and is affirmed.

The ALJ's determination that the claimant's IR is zero percent is supported by sufficient evidence and is affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO, PRESIDENT  
6210 EAST HIGHWAY 290  
AUSTIN, TEXAS 78723.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge