

APPEAL NO. 051129-s  
FILED JUNE 21, 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 12, 2005. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; (2) the claimant failed to give timely notice of injury to her employer pursuant to Section 409.001; (3) the claimant has not had disability because there was no compensable injury; and (4) the claimant is not barred from pursuing workers' compensation benefits because of an election to receive benefits under a group health insurance policy. The claimant appeals the hearing officer's determinations on the issues of compensable injury, timely notice of injury to the employer, and disability. The respondent (carrier) requests affirmance. There is no appeal of the hearing officer's determination on the issue of election of remedies.

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)) 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 five days after the date mailed. See *also* Rule 143.3(d)(1), which provides for a deemed receipt date of the hearing officer's decision five days after mailing, unless the great weight of the evidence indicates otherwise.

In adopting recent amendments to Rule 102.5(d), which were effective May 1, 2005, the Commission, in the preamble to the amended rule, considered a comment that recommended that the receipt date in Rule 102.5(d) be the first working day five days after the date mailed and that the deemed receipt date should only be on a working day. In response to that comment, the Commission stated that it disagreed that the working day provision needs to be added to Rule 102.5(d) because Rule 102.3(d), relating to Computation of Time, already addresses the commenter's concerns. The Commission's response further stated that the computation of time relating to receipt of correspondence on a nonworking day is addressed in Rule 102.3(d) which indicates that "any written or telephonic communication received other than during normal business hours on working days are considered received at the beginning of normal business hours on the next working day."

Consequently, taking into consideration the Commission's response to the recommendation that the five-day deemed receipt provision should provide for receipt on a working day, it clearly appears that the Commission intends for Rule 102.3(d) to apply to situations where the fifth day of the deemed receipt period provided for in Rule 102.5(d) is not a working day, and thus, there was no need for the Commission to amend Rule 102.5(d) to include a working day provision with regard to the five-day deemed receipt provision. Rule 102.3(b) provides that a working day is any day, Monday – Friday, other than a national holiday as defined by Texas Government Code Section 662.003(a) and the Friday after Thanksgiving Day, December 24th and December 26th, and that use of the term "day" rather than "working day" means a calendar day. Extending the five-day deemed receipt period to the next working day where the fifth day of the five-day deemed receipt period is a nonworking day represents a change in how the Appeals Panel has most recently calculated the five-day period.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on April 18, 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 April 18, 2005, was Saturday, April 23, 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, April 25, 2005. See *also* Rule 102.3(a)(3), which provides that unless otherwise specified, if the last day of any period is not a working day, the period is extended to include the next day that is a working day. The claimant states in her appeal that she received the hearing officer's decision on April 27, 2005, but does not provide any information regarding why it was not received by the deemed date of receipt, April 25, 2005. The Appeals Panel has held that when Commission records show mailing of the hearing officer's decision to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt. Appeal No. 042688, *supra*. The 15th day after April 25, 2005, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was Monday, May 16, 2005. The envelope in which

the claimant's appeal was mailed to the Commission contains a postmark of May 17, 2005. Because the claimant's request for appeal was mailed to the Commission after May 16, 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.

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.

According to information provided by the insurance carrier, the true corporate name of the insurance carrier is **TEXAS WORKERS COMPENSATION SOLUTIONS** and the name and address of its registered agent for service of process is

**JERRY EDWARDS  
1002 MARBLE HEIGHTS DRIVE  
MARBLE FALLS, TEXAS 78654.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge