

APPEAL NO. 050647  
FILED APRIL 27, 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 February 22, 2005. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on March 4, 2003, with a zero percent impairment rating (IR). The claimant appeals, contending that the designated doctor's opinion had been overcome by the great weight of other medical evidence. 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).

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)) (formerly Rule 143.3(c)) provides that a request for review 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. 020172, decided March 12, 2002. 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).

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on February 25, 2005. The cover letter to the hearing officer's decision contains the same address for the claimant as is shown as the claimant's return address on the envelope in which he mailed his appeal and as is shown on the CCH sign in sheet. Pursuant to Rules 102.5(d) and 143.3(d)(1), the claimant is deemed to have received the hearing officer's decision on March 2, 2005, unless the great weight of the evidence indicates otherwise. Although the claimant states in his appeal that he received the hearing officer's decision on March 3, 2005, the Appeals Panel has held

that when Commission records show mailing 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 provided by Commission rule. Texas Workers' Compensation Commission Appeal No. 010379, decided March 22, 2001. The 15th day after the claimant's deemed date of receipt, excluding Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code, was March 23, 2005. The envelope in which the claimant mailed his appeal to the Commission contains a postmark dated March 24, 2005, and the certificate of service is dated March 24, 2005. Since the claimant's request for appeal was mailed to the Commission after March 23, 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.

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

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

**MR. RUSSELL RAY OLIVER, PRESIDENT  
221 WEST 6TH STREET, SUITE 300  
AUSTIN, TEXAS 78701-3403.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Margaret L. Turner  
Appeals Judge