

APPEAL NO. 980157  
FILED MARCH 6, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 20, 1997, a hearing was held. She (hearing officer) held the record open until December 5, 1997, and then determined that appellant (claimant) was not entitled to supplemental income benefits for the first compensable quarter. Claimant asserts that medical evidence does not support the finding that claimant was able to do some work and asks for a reversal of the determination. Respondent (carrier) states that the appeal is untimely, but adds that if considered the decision should be affirmed.

DECISION

Finding that the request for review was not timely filed, the decision of the hearing officer is final. See Sections 410.202 and 410.169.

We note that the record indicates that neither claimant nor her attorney were present at the hearing of November 20, 1997. Counsel faxed a request for continuance to the Texas Workers' Compensation Commission (Commission) on November 19, 1997, which was not granted. In response to the hearing officer's subsequent inquiry, claimant offered an explanation for the absence that was then judged not to amount to good cause. (We note that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.10 (Rule 142.10) provides that a request for continuance by a represented claimant shall be in writing and be sent to the Commission five days before the hearing.)

The decision and order of the hearing officer were distributed on December 15, 1997, by cover letter dated December 15, 1997. The carrier signed for its copy of the decision on December 16, 1997. Claimant's request for review does not indicate when the hearing officer's decision was received, but Rule 102.5(h) provides for a deemed date of receipt five days after the date mailed. Five days after December 15th would be December 20th, but since that date is on a Saturday, the hearing officer's decision is deemed to have been received on December 22, 1997, a Monday. Section 410.202 provides that a request for appeal must be filed no later than 15 days from the date the decision of the hearing officer was received. Fifteen days from December 22nd is January 6, 1998. While claimant's appeal is dated January 9, 1998, it was not postmarked until January 15, 1998, nine days after the final day it could have been timely filed. Even had the decision of the hearing officer been received one week later on December 29th, the envelope containing the appeal still was not postmarked within 15 days of receipt. The appeal is untimely.

The decision and order of the hearing officer are final.

Joe Sebesta  
Appeals Judge

CONCUR:

Susan M. Kelley  
Appeals Judge

Elaine M. Chaney  
Appeals Judge