

APPEAL NO. 980293
FILED MARCH 12, 1998

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 17, 1997, a contested case hearing was held in (City), Texas, with (hearing officer) presiding as the hearing officer. With respect to the single issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits for the first quarter. The purported appeal challenges the sufficiency of the evidence to support that determination. Respondent's (carrier) response urges affirmance.

DECISION

Determining that the claimant's appeal was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, the hearing officer's decision and order have become final pursuant to Section 410.169 and Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 142.16(f) (Rule 142.16(f)).

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was distributed to the parties on January 2, 1998, with a cover letter of the same date. Claimant's request for review indicates, that she received the hearing officer's decision and order on January 10, 1998. Under Rule 102.5(h), the claimant is deemed to have received the decision and order five days after the date it is mailed, or on January 7, 1998, in this instance. In Texas Workers' Compensation Commission Appeal No. 94117, decided March 3, 1994, we noted that when Commission records show distribution on a particular day to the claimant 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 established by Rule 102.5(h). Under Rule 143.3(c) a request for review is timely if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision. In this instance, the 15th day after the deemed date of receipt was Thursday, January 22, 1998. Although, claimant's appeal is dated January 20, 1998, it is not postmarked until February 11, 1998, and is, therefore, untimely. We note that even if we were to accept the January 10, 1998, date of receipt, the 15-day period would have expired on Monday, January 26, 1998, and the appeal would have been untimely filed.

Our jurisdiction not having been properly invoked, the hearing officer's decision and order have become final. Section 410.169; Rule 142.16(f).

Elaine M. Chaney
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge