

APPEAL NO. 990279

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 November 10, 1998. The issues at the CCH were whether the appellant (claimant) is entitled to supplemental income benefits (SIBS) for the 17th and 18th compensable quarters. The hearing officer determined that the claimant is not entitled to SIBS for the 17th and 18th compensable quarters. The claimant appeals, urging that she is totally unable to work and citing testimony and evidence which she believes support her contention. The claimant also argues that Dr. O acknowledges he was paid for his testimony. The respondent (carrier) replies that claimant's appeal is untimely and, if not, urges that the decision of the hearing officer is supported by the evidence and asks that it be affirmed.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)), an appeal, to be timely, must be filed or mailed not later than the 15th day after the date of receipt of the hearing officer's decision. Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was mailed to the claimant on November 25, 1998, with a cover letter dated November 25, 1998. In her appeal, the claimant denies that she received a copy of the decision in the mail. She said that in November and December 1998, she called an ombudsman other than the one who assisted her at the hearing and was told that the decision had not been received. She said that she called again on January 26, 1999; that the decision was located, and a copy of was faxed to her at a pain clinic on that date. Dispute Resolution Information System notes record a call to the ombudsman on January 26, 1999, but do not contain records of calls concerning the decision in November or December. A copy of the decision was faxed to her on January 26, 1999. Under Rule 102.5(h), the claimant is deemed to have received the decision and order of the hearing officer five days after it was mailed, or on November 30, 1998. The Appeals Panel has held many times that where the Commission records show distribution on a particular day to the address confirmed by the claimant as being accurate, a mere statement that the decision was not received in the mail is not sufficient to extend the date of receipt past the deemed date of receipt established by Rule 102.5(h). See, e.g., Texas Workers' Compensation Commission Appeal No. 94117, decided March 3, 1994. Commission records reflect the decision was mailed to the same address that the claimant lists as her return address on the envelope in which she mailed the request for review. The decision was not returned to the Hearings Division. Therefore, as we stated in Texas Workers' Compensation Commission Appeal No. 941057, decided September 9, 1994, the mere unexplained statement is insufficient to extend the period for filing a timely appeal. Here, with the deemed receipt date being November 30, 1998, the last day to timely file an appeal was

December 15, 1998. The envelope in which the claimant's appeal was sent to the Commission shows a postmark date of February 8, 1999. Thus, the appeal was untimely, the jurisdiction of the Appeals Panel was not properly invoked, and the decision and order of the hearing officer became final under Section 410.169.

Because of the unusual circumstances concerning receipt of the decision of the hearing officer by the claimant, we reviewed the record. Had the appeal been timely filed, we would have found the evidence to be sufficient to support the decision of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge