

APPEAL NO. 990708

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 March 9, 1999. The issue at the CCH was whether the appellant (claimant) is eligible for supplemental income benefits (SIBS) for the second compensable quarter, November 14, 1998, through February 12, 1999. The hearing officer determined that the claimant is not eligible for SIBS for the second compensable quarter. The claimant appeals, urging that the great weight of evidence is to the contrary of the hearing officer's decision. The respondent (carrier) replies that the hearing officer is the sole judge of the weight and credibility of the evidence and that the hearing officer's decision is in fact supported by the great weight and preponderance of the evidence. The carrier urges that the hearing officer's decision 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.

Records of the Texas Workers' Compensation Commission show that the decision of the hearing officer was mailed to the claimant on March 11, 1999, with a cover letter of the same date. 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. The claimant indicates that he received the decision and order of the hearing officer on March 16, 1999.

Thus, the last day to timely file an appeal would be March 31, 1999. While the claimant's certificate of service recites service on April 30, 1999 (sic), the envelope in which the claimant's appeal was mailed has a printed United States Postal Service imprint reciting a date of April 1, 1999, and the U.S. Postal Service postmark superimposed over that metered imprint is also April 1, 1999. Thus, the appeal, having been filed after March 31, 1999, 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.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge