

APPEAL NO. 990994

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 April 5, 1999, with the record closing on April 6, 1999. The issues at the CCH were whether the appellant (claimant) is entitled to supplemental income benefits (SIBS) for the ninth and 10th compensable quarters. The hearing officer determined that the claimant is not entitled to SIBS for the ninth and 10th compensable quarters. The claimant appeals, contending that the SIBS determinations of the hearing officer are so contrary to the great weight and preponderance of the evidence as to be manifestly unjust and that her conclusions of law are also arbitrary and capricious. The claimant asks that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant is entitled to SIBS for the ninth and 10th compensable quarters. The respondent (carrier) responds that the decision of the hearing officer is correct, fully supported by the evidence, and should 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 and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after receipt of the hearing officer's decision. Records of the Commission show that the hearing officer's decision was mailed to the claimant on April 13, 1999, with a cover letter dated April 13, 1999. The claimant states that she received the hearing officer's decision on April 20, 1999.

Under Rule 102.5(a), all notices and written communications to the claimant or claimant's representative will be mailed to the last address supplied by the claimant or representative. Rule 102.5(h) provides that the claimant is deemed to have received the decision of the hearing officer five days after it was mailed. The Appeals Panel has held that, where Commission records show mailing on a particular day to the address confirmed by the claimant as being correct, a mere statement that the decision was not received until a later date is not necessarily sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998. The envelope containing the claimant's request for review is postmarked May 5, 1999, and the certificate of service recites service on the carrier on May 5, 1999. While the envelope containing the claimant's appeal bears the return address of the claimant's attorney, the hearing officer's decision was sent to the claimant at her

address as shown on the Commission's records, and the sign-in sheet for the CCH shows the same address for the claimant.

Under Rule 102.5(h), the claimant is deemed to have received the hearing officer's decision on Monday, April 19, 1999, six days after it was mailed (the fifth day having fallen on a Sunday). The claimant had 15 days, or until Tuesday, May 4, 1999, to mail her request for review to the Commission. The claimant's request for review was mailed on May 5, 1999, and was received by the Commission on May 10, 1999. The claimant's request for review was neither mailed by the 15th day after receipt of the hearing officer's decision nor received by the Commission by the 20th day after receipt of that decision. Thus, under Section 410.169, we must find that the decision of the hearing officer is final.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge