

APPEAL NO. 991094

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 16, 1999. The issue at the CCH was whether the appellant (claimant) is entitled to supplemental income benefits (SIBS) for the seventh compensable quarter. The hearing officer determined that the claimant made no effort to obtain employment during the seventh quarter qualifying period, that he had some ability to work during that qualifying period, that he did not make a good faith effort to obtain employment commensurate with his ability to work during that qualifying period, that his unemployment is a direct result of his compensable injury, and that he is not entitled to SIBS for the seventh compensable quarter. The claimant appeals, asserting that, since the claimant's treating doctor took the claimant off work unconditionally and listed the claimant's work status as "unable to work at this time," the decision of the hearing officer is incorrect and not based on all of the evidence. The claimant asks that the Appeals Panel reverse the decision of the hearing officer and render a decision for the claimant. The respondent (carrier) responds that the decision of the hearing officer was not against the great weight and preponderance of the evidence presented at the hearing and should be affirmed.

DECISION

A timely appeal not having been filed, the decision of the hearing officer has 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 hearing officer's decision was mailed to the claimant on April 23, 1999, with a cover letter dated April 23, 1999. Rule 102.5(h) provides that the claimant is deemed to have received the hearing officer's decision five days later, or on April 28, 1999, as indicated in the claimant's request for review. Thus, the claimant had until Thursday, May 13, 1999, to file his appeal. While the cover letter with the claimant's request for review is dated May 12, 1999, and the certificate of service indicates service on the carrier on May 12, 1999, the claimant's request for review was hand-delivered to the Commission's (City 1) field office on May 17, 1999, and is so stamped. Since the claimant's request for review was not mailed by the 15th day after receipt of the hearing officer's decision and was not filed by hand delivery by the 15th day after receipt of the hearing officer's decision, it was untimely filed.

The timeliness of an appeal is jurisdictional and does not have to be raised by a party to be addressed on review. See Texas Workers' Compensation Commission Appeal No. 941695, decided January 27, 1995.

The claimant's request for review having been untimely filed, the decision of the hearing officer has become final. Section 410.169.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Tommy W. Lueders
Appeals Judge