

APPEAL NO. 991194

Following a contested case hearing held on May 5, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the appellant (claimant) is not entitled to supplemental income benefits for the 14th and 15th compensable quarters. Claimant appealed on the basis of evidentiary insufficiency. The respondent (carrier) urged, in response, the sufficiency of the evidence.

DECISION

Determining that the request for review was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, the decision of the hearing officer has become final pursuant to the provisions of Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) reflect that the hearing officer's decision was distributed to the parties on May 12, 1999, under cover letter dated May 12, 1999. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §102.5(h) (Rule 102.5(h)) provides that the Commission shall deem the received date of its written communications to be five days from the date mailed and claimant's appeal indicates that was the date he received it.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." See *also* Rule 143.3(a). Rule 143.3(c) provides that a request for review shall be presumed timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after such receipt. Since claimant is deemed to have received the decision on May 17, 1999, a Monday, his deadline to appeal was 15 days later, that is, June 1, 1999, a Tuesday. Although claimant's appeal, which was sent by certified mail, was dated June 1, 1999, and the metered postage bore that date, the United States Postal Service stamp on the envelope, which is not completely legible, bears the date of June 2, 1999. Accordingly, claimant's appeal is determined to be untimely and the jurisdiction of the Appeals Panel has not been properly invoked.

Because claimant did not timely file an appeal from the hearing officer's decision, the decision and order have become final pursuant to Section 410.169.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Alan C. Ernst
Appeals Judge