

APPEAL NO. 991689

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 June 25, 1999. The issues at the CCH were whether the appellant (claimant) is entitled to supplemental income benefits (SIBS) for the 14th and 15th quarters. The hearing officer determined that the claimant is not entitled to SIBS for the 14th and 15th quarters. The claimant appeals, contending that he had a total inability to work, that he therefore made a good faith effort to seek employment commensurate with his ability, and that he is entitled to SIBS for the 14th and 15th quarters. The respondent (carrier) responds that the decision and order of the hearing officer are supported by sufficient 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.

The records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was distributed to the claimant on July 15, 1999, and the claimant states in his appeal that he received the hearing officer's decision on July 19, 1999. Under Section 410.202, an appeal, to be timely, must be filed within 15 days of the date the decision of the hearing officer is received. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)), an appeal is presumed timely if it is mailed not later than the 15th day after receipt of the decision and received by the Commission not later than 20 days after receipt of the decision. Thus, the last day on which the claimant could timely mail his appeal was Tuesday, August 3, 1999. The certificate of service in the claimant's appeal reflects mailing to the Commission and the carrier's attorney on August 3, 1999, but the adhesive United States postage strip attached to the envelope in which it was mailed shows it as mailed from city, on August 5, 1999. The claimant's appeal was received by the Commission on Monday, August 9, 1999.

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

The claimant's appeal was untimely, the jurisdiction of the Appeals Panel was not properly invoked, and the decision and order of the hearing officer have become final under Section 410.169.

Joe Sebesta
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge