

APPEAL NO. 991839

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, and again on July 14, 1999. The issue at the CCH was whether the appellant (claimant) is entitled to supplemental income benefits (SIBS) for the ninth compensable quarter, April 6 through July 5, 1999. The hearing officer determined that, during the filing period for the ninth compensable quarter, the claimant had some ability to perform some work and that he did not attempt in good faith to obtain employment commensurate with his ability to work the hearing officer concluded that claimant is not entitled to SIBS for the ninth compensable quarter. The claimant appealed, contending that he was not informed until the CCH that he had to seek employment and that he is entitled to SIBS for the ninth compensable quarter. The carrier responded and that the hearing officer's decision 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.

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was distributed to the claimant on July 23, 1999. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)), the claimant is deemed to have received the decision five days later, on Wednesday, July 28, 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 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 file or mail his appeal was Thursday, August 12, 1999. The claimant's appeal is dated August 18, 1999 and it was sent by "UPS NEXT DAY AIR" to the Commission's (City) field office, where it was received on August 19, 1999.

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

Judy L. Stephens
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge