

APPEAL NO. 000083

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 December 10, 1999. The issue at the CCH was whether the appellant (claimant) is entitled to supplemental income benefits (SIBS) for the 14th compensable quarter. The hearing officer determined that the claimant is not entitled to SIBS for the 14th quarter. The claimant appealed, contending that her physical condition restricted her to part-time work, refuting the physical therapist's report on her condition and the surveillance report, and outlining her problems with the respondent (carrier). The carrier responded that the claimant's appeal is untimely and that the hearing officer's decision should be affirmed. The claimant filed a response to the carrier's response, mailed February 7, 2000, and received February 9, 2000, stating that she was at her permanent home in State 1 for Christmas, became ill, was unable to return to State 2, where she lives with her daughter, and did not receive the hearing officer's decision until her daughter returned to State 2 on January 3, 2000, and immediately sent it to her, and that she received it on January 5, 2000.

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. Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on December 22, 1999, with a cover letter of the same date affecting the same address which claimant used in her appeal and response.

Under Rule 102.5(a), as amended effective August 29, 1999, all notices and written communications to the claimant or claimant's representative will be mailed to the most recent address supplied by certain forms filed by the employer or the carrier or by any verbal or written communication from the claimant. Rule 102.5(d), as amended effective August 29, 1999, provides that, unless the great weight of the evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after the date it was mailed. The claimant does not contend that the address to which the hearing officer's decision was mailed was not the correct mailing address. She states that when her daughter returned to the State 2 residence on January 3, 2000, the hearing officer's decision was there. She indicates that the hearing officer's decision was postmarked December 22, 1999, as the Commission records reflect. We also note that the claimant states that the decision reached her in State 1 on January 5, 2000, sent by her daughter, at which time she had six days, until January 11, 2000, to mail her appeal. Claimant's appeal was mailed on January 12, 2000. Rule 143.3 does not provide for an extension of time for an appeal due to absence from home or illness. Texas Workers' Compensation

Commission Appeal No. 990809, decided June 2, 1999 (Unpublished). As the Appeals Panel stated in a case in which the claimant asked to be excused from the time limit because of a death in the family:

There is no evidence to show that the claimant ever notified the Commission of any change of address or that the Commission in any way improperly addressed the claimant's copy of the hearing officer's decision. Although the claimant had a death in her family, the Appeals Panel cannot grant an extension of time for the filing of a request for review because we lack any authority to do so under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 952111, decided January 24, 1996.

In Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998, the Appeals Panel noted that there was "no showing that the decision was mailed to an incorrect address or delayed by any circumstance beyond the control of the claimant." In Texas Workers' Compensation Commission Appeal No. 94517, decided June 14, 1994, we spoke of mailing to the wrong address or postal error. See also cases cited therein. In Texas Workers' Compensation Commission Appeal No. 94117, decided September 30, 1994, we stated that "[n]o further explanation, such as theft of mail at her residence, was offered, nor was any inquiry of postal authorities reported by claimant. See Texas Workers' Compensation Commission Appeal No. 94030, decided February 15, 1994."

The hearing officer's decision is considered to have been received when it was delivered to the correct mailing address of the claimant, whether or not she was there at the time or had made arrangements for her mail to be picked up. The appeal is thus untimely.

The appeal being 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.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Dorian E. Ramirez
Appeals Judge