

APPEAL NO. 000139

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 2, 1999. The issue at the CCH was whether the appellant (claimant) is entitled to supplemental income benefits (SIBS) for the second quarter. The hearing officer determined that the claimant is not entitled to SIBS for the second quarter. The claimant appeals, contending that two accident files have been put into the same file; that she was on an off-work status; and that she asked her attorney to file an appeal and was told by him that he would, that he did not file an appeal and that her appeal is late for that reason. The respondent (carrier) responds that the claimant's appeal was not timely filed and, if the appeal is timely, the hearing officer's determinations are supported by sufficient evidence as 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.

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 show that the hearing officer's decision was mailed to the claimant on December 29, 1999, with a cover letter dated December 28, 1999. The claimant indicates in her appeal that she received the hearing officer's decision on or about January 3, 2000, which would have been the deemed date of receipt under Rule 102.5(d). Fifteen days after January 3, 2000, would be Tuesday, January 18, 2000, the statutory date by which an appeal must be filed. Rule 143.3(c) provides that an appeal shall be presumed to be timely filed if it is mailed on or before the 15th day after receipt of the hearing officer's decision and received not later than the 20th day after receipt of the decision. Claimant's appeal is dated January 20, 2000, and was received January 24, 2000. In that claimant's appeal was filed beyond the statutory days accorded in Section 410.202 (being after January 18, 2000), claimant's appeal is untimely. Section 410.169 states that the hearing officer's decision is final in the absence of a timely appeal and therefore we have no jurisdiction to consider the appeal.

The claimant states that her attorney told her that he would file an appeal and later indicated to her that he was working on an appeal but that he never filed one. The Appeals Panel has held that an attorney acts as the agent of the claimant and his or her action or inaction within the scope of employment is attributable to the claimant. Texas Workers' Compensation Commission Appeal No. 93664, decided September 15, 1993; Texas Workers' Compensation Commission Appeal No. 950276, decided April 7, 1995 (Unpublished). The Appeals Panel has specifically applied this principle in a case where the claimant argued that his attorney would file an appeal and did not do so. In that case,

the claimant filed an appeal several months after the deadline after the attorney withdrew and returned his file. The Appeals Panel held that the claimant's appeal was untimely. Texas Workers' Compensation Commission Appeal No. 93605, decided August 26, 1993. The claimant's redress, if any, in this case is from her attorney.

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.

Thomas A. Knapp  
Appeals Judge

CONCUR:

Gary L. Kilgore  
Appeals Judge

Alan C. Ernst  
Appeals Judge