

APPEAL NO. 000557

In four separate contested case hearings (CCH), held on July 30, 1998; November 13, 1998; and March 9, 1999, respectively, the hearing officer, determined that the claimant is not entitled to supplemental income benefits (SIBs) for the first and second quarters, the third quarter, and the fourth quarter, respectively. The Appeals Panel affirmed these decisions in Texas Workers' Compensation Commission Appeal No. 982091, decided October 14, 1998 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982996, decided February 3, 1999 (Unpublished); and Texas Workers' Compensation Commission Appeal No. 990715, decided May 21, 1999 (Unpublished), respectively. The claimant sought judicial review on each of these cases and prevailed in the trial court. The following Commission Orders for Attorney's Fees were issued in connection with these SIBs quarters: Sequence 22 (Order 1), issued January 13, 2000, by VH; Sequence 23 (Order 2), issued January 13, 2000, by VH; Sequence 24 (Order 3), issued January 6, 2000, by JR; Sequence 25 (Order 4), issued January 13, 2000, by VH; Sequence 26 (Order 5), issued January 6, 2000, by JR; and Sequence 27 (Order 6), issued January 14, 2000, by GM. These orders awarded attorney's fees to the respondent (attorney) in the amount of \$425.00; \$262.50; \$1,175.00; \$325.00; \$1,300.00; and \$1,050.00, respectively, as requested, the fees to be paid pursuant to Section 408.147(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 152.1(f) (Rule 152.1(f)). The appellant (carrier) appeals these orders, contending that, although the orders have not been contested within 15 days of the carrier's receipt, the carrier's contest is still timely as the Texas Workers' Compensation Commission (Commission) allegedly had no jurisdiction to issue the orders, because judicial review was not final on the SIBs quarters in question and because the carrier had never disputed a Commission determination of eligibility for SIBs for the quarters in question. The carrier states that it is unclear whether this case should be appealed to the Appeals Panel or whether a CCH should be requested and that the carrier is therefore doing both. The attorney responds that the carrier's dispute of the orders is not timely, that the Commission retained jurisdiction over attorney's fees for services performed while the claim was pending before the Commission so that the orders are thus valid, and that, since the carrier failed to timely appeal the orders, they would have become final even in the face of obvious error. The appeal file contains no response from the claimant.

DECISION

Order 6 not having been issued by a hearing officer following a CCH, the Appeals Panel has no jurisdiction to entertain an appeal of that order. A timely appeal not having been filed as to Orders 1 through 5, they have become final.

Rule 152.3(e) provides that an attorney, claimant, or carrier who contests the fee ordered by a hearing officer after a CCH shall request review by the Appeals Panel pursuant to the provisions of Rule 143.3. Rule 143.3(c) provides that a request for review is presumed to be timely filed if it is mailed not later than the 15th day after receipt of the hearing officer's decision (or in this case the order) and received by the Commission not later than the 20th day after receipt of the hearing officer's decision (in this case the order). The latest of Orders 1

through 5 was issued on January 13, 2000. Under Rule 102.5(d), as amended August 29, 1999, if the orders were mailed out as is the usual course of business on the following day, the latest of these five orders is deemed to have been received by the carrier five days after it was mailed, or in this case on Thursday, January 20, 2000 (the preceding day having been a holiday). Thus the carrier's appeal as to the last of the orders would have had to have been mailed not later than February 4, 2000. The carrier's appeal was hand-delivered to the Commission on March 7, 2000, over one month later. The earlier orders would have been due even earlier. The appeal of Orders 1 through 5 is therefore untimely.

As to Order 6, Rule 152.3(d) states that, except as provided by Rule 152.3(e), a party contesting a fee must request a CCH no later than the 15th day after receiving the order. The Appeals Panel thus has no jurisdiction to entertain an appeal of Order 6, since it was not issued by a hearing officer. We note that a request for a CCH on this order, if made on the same date as the appeal to the Appeals Panel, would also appear to be untimely.

As to the carrier's argument about quarters after the first quarter of SIBs, we note that we have recently declined to reconsider our decision in Texas Workers' Compensation Commission Appeal No. 950534, decided May 19, 1995. Texas Workers' Compensation Commission Appeal No. 000217, decided March 15, 2000.

The Appeals Panel lacks jurisdiction to entertain an appeal of Order 6. The appeal of Orders 1 through 5 being untimely, the jurisdiction of the Appeals Panel was not properly invoked and those five orders have become final.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Dorian E. Ramirez
Appeals Judge