

APPEAL NO. 000871

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 11, 2000. The record closed on March 17, 2000. With respect to the issues before her at the hearing, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the eighth and ninth quarters. The claimant appeals, citing evidence in support of his entitlement to SIBs and asks that we reverse the decision of the hearing officer and render a decision in his favor. In its response, the respondent (carrier) urges affirmance.

DECISION

Determining that the claimant's request for appeal was not timely filed with the Texas Workers' Compensation Commission (Commission) and that the jurisdiction of the Appeals Panel has not been properly invoked, the decision of the hearing officer has become final under Section 410.169.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994.

Records of the Commission reflect that the hearing officer's decision was distributed to the claimant on March 30, 2000, with a cover letter of the same date. The claimant does not state in his appeal when he received the hearing officer's decision. Under Rule 102.5(a), as amended effective August 29, 1999, all communications sent to a claimant will be sent to his or her last known address as reflected in the Commission's records. Amended Rule 102.5(d) provides that, unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed. In this instance, the claimant is deemed to have received the hearing officer's decision on Tuesday, April 4, 2000, five days after it was mailed. The 15th day after April 4, 2000, is Wednesday, April 19, 2000. The claimant's appeal reflects service on the carrier's attorney on April 19, 2000, and the cover letter bears that date. However, the envelope which contained the claimant's appeal is postmarked April 20, 2000, and is

stamped as received by the Commission's Chief Clerk of Proceedings on April 25, 2000. Since the claimant's appeal was postmarked on the 16th day after the claimant's receipt of the hearing officer's decision and was received by the Commission on the 21st day after receipt of the hearing officer's decision, it was not timely filed. Section 410.169 provides that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

The hearing officer's decision and order have become final under Section 410.169.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge