

APPEAL NO. 000971

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 7, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first and second quarters, but he is entitled to SIBs for the third quarter. The claimant appealed the determinations that he is not entitled to SIBs for the first and second quarters, stated that he had not been sent the rules defining good faith, and said that his actions were in good faith. The claimant did not specify the relief he sought. The respondent (self-insured) replied, contended that the claimant's appeal is not sufficient to be an appeal and was not timely filed, urged that the determinations that the claimant is not entitled to SIBs for the first and second quarters are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and requested that the decision of the hearing officer be affirmed. The self-insured did not appeal the determination that the claimant is entitled to SIBs for the third quarter.

DECISION

The claimant's request for review was not timely filed and the decision and order of the hearing officer have become final.

The records of the Texas Workers' Compensation Commission (Commission) reflect that the decision of the hearing officer was distributed on March 10, 2000. The claimant did not state when the decision of the hearing officer was received. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)) provides that the Commission shall deem the received date to be five days after the date mailed. The claimant's appeal is dated Sunday, March 12, 2000, and was received in an envelope postmarked May 2, 2000. If the date on the letter is ignored, the claimant is deemed to have received the hearing officer's decision on March 15, 2000. Section 410.202 provides that a party that desires to appeal the decision of the hearing officer shall file a written request for review 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 Commission's Division of Hearings. Considering the date the claimant was deemed to have received the decision of the hearing officer, the last day for the claimant to file an appeal was Thursday, March 30, 2000. The claimant's appeal was received in an envelope postmarked May 2, 2000, and was not timely filed. Under the provisions of Section 410.169 and Rule 142.16(f), a decision of a hearing officer regarding benefits is final in the absence of a timely appeal.

We note that the decision of the hearing officer is very brief; does not refer to Rule 130.102(d) concerning the good faith requirement for entitlement to SIBs; and has a simple finding of fact stating that during the qualifying periods for the first and second quarters for SIBs the claimant did not make a good faith effort to obtain employment commensurate with his ability to work and simple conclusions of law that the claimant is not entitled to SIBs for the first and second quarters. There may be some frustration on the part of the

claimant who was represented by counsel; however, the Appeals Panel has held that the lack of knowledge of the law or the rules is not good cause for not complying with the requirements in them.

The jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer became final under the provisions of Section 410.169 and Rule 142.16(f).

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Alan C. Ernst
Appeals Judge