

APPEAL NO. 001061

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 April 12, 2000. The issue at the hearing was whether the appellant (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter. The hearing officer determined that the claimant failed to make a good faith effort to seek employment commensurate with his ability to work during the qualifying period for the first quarter of SIBs and, thus, is not entitled to SIBs for the first quarter. The claimant appealed, contending that he has not been released to work; has undergone training; and has made a good faith search for employment. The respondent (carrier) responds that the claimant's appeal is untimely, that the claimant had some ability to work, and that the claimant did not make a search for employment until late in the quarter.

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 April 18, 2000, under a cover letter of the same date. The hearing officer's decision was mailed to the same address as was given by the claimant on the appearance sheet for the hearing.

Under Rule 102.5(d), as amended effective August 29, 1999, 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. The Appeals Panel has held that, where Commission records show mailing on a particular day to the address confirmed by the claimant as being correct, a mere statement that the decision was not received until a later date is not necessarily sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998. In his purported appeal, the claimant states that he received the hearing officer's decision on April 28, 2000, but he offers no proof or explanation for the late delivery of the hearing officer's decision, which would be deemed received on April 23, 2000.

The claimant had 15 days from April 23, 2000, or until May 8, 2000, to mail his request for review to the Commission. A copy of the claimant's appeal was faxed to the Commission on May 12, 2000, and another copy was sent to the Commission by express mail on the same day, which was received on May 15, 2000. The appeal is untimely because it was faxed and mailed after the 15-day deadline.

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.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Tommy W. Lueders
Appeals Judge