

## APPEAL NO. 001348

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 May 10, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter and that the respondent (carrier) did not waive the right to contest entitlement to first quarter SIBs. The claimant appeals the non-entitlement determination, expressing his disagreement with it. The carrier replies that the decision is correct, supported by sufficient evidence, and 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.

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on May 19, 2000, under a cover letter of the same date to the claimant at the same address as the return address on the envelope which contained the claimant's appeal. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (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, or on Thursday, May 24, 2000. The claimant states in his appeal that he received the hearing officer's decision on May 25, 2000. 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 Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998. Pursuant to Section 410.202 and Rule 143.3(c), an appeal must be filed or mailed not later than the 15th day after the date of receipt of the hearing officer's decision.

To be timely, the claimant had to mail or file the appeal no later than June 8, 2000, which was the 15th day after May 24, 2000, the deemed date of receipt. The claimant's appeal was postmarked June 9, 2000, and is thus untimely, having been mailed one day after the 15-day deadline for filing an appeal.

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.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Judy L. Stephens  
Appeals Judge