

APPEAL NO. 001404

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 10, 2000, closing on April 26, 2000. The issues at the CCH were whether the appellant (claimant) is entitled to supplemental income benefits (SIBs) for the second through the seventh quarters, permanent loss of entitlement to SIBs, timely filing of Statement of Employment Status (TWCC-52) forms for those quarters, and the respondent-s (carrier) waiver as to those quarters. The hearing officer determined that the claimant is not entitled to SIBs for the second through seventh quarters and has permanently lost entitlement to SIBs. The claimant appeals, contending that the Texas Workers' Compensation Commission (Commission) did not have her correct address and telephone number; that she did not receive written notice of the time and date of the CCH; that she was not able to present her evidence and testimony; that she did make a good faith search for employment; and that she does qualify for SIBs for the six quarters in question. The carrier responds that the hearing officer's decision is supported by the evidence and should be affirmed. The carrier contends that the claimant did not respond to the 10-day letter and, had she done so, she could have presented evidence at a subsequent CCH.

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 Commission show that the hearing officer's decision was mailed to the claimant on May 23, 2000. The claimant states that she received the hearing officer's decision on May 29, 2000. Rule 102.5(d), as amended effective August 29, 1999, 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, or on May 28, 2000. The claimant had 15 days, or until Monday, June 12, 2000, to mail her request for review. While the claimant's certificate of service indicates service on the claimant's attorney and to the Commission on June 12, 2000, the USPS adhesive sticker on the envelope which contained the claimant's appeal indicates that postage was paid on June 14, 2000. The claimant-s appeal was not received by the Commission until June 20, 2000. Thus, the claimant's appeal is untimely even allowing 15 days from the date she stated she received the hearing officer's decision.

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.

Kathleen C. Decker
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge