

APPEAL NO. 001567

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 June 6, 2000. The issue at the CCH was whether the (appellant) claimant is entitled to supplemental income benefits (SIBs) for the 16th compensable quarter, from December 3, 1999, through March 2, 2000. The hearing officer determined that the claimant is entitled to SIBs for the 16th quarter and ordered the respondent (carrier) "to pay benefits in accordance with this decision, the [1989 Act], and the Commission's [Texas Workers' Compensation Commission] Rules." The claimant appeals, contending that, pursuant to Section 408.064, the hearing officer should have ordered the carrier to pay income benefits owed in a lump sum with interest. The appeal file contains no response from the carrier.

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 June 14, 2000, under a cover letter of the same date. We note that the address to which the hearing officer's decision was mailed is the same as the return address on the envelope in which the claimant's appeal was mailed.

The claimant does not state in his appeal when he received the hearing officer's decision. 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, in this case, on June 19, 2000. The claimant had 15 days, or until July 5, 2000 (the 15th day having fallen on a holiday, Rule 102.3(e)) to file an appeal. The claimant's appeal was mailed on July 6, 2000, as shown by the postmark and the USPS adhesive label on the envelope which contained it. The claimant's appeal is untimely, having been mailed one day after the 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. However, we note that the decision and order of the hearing officer does specify

that the carrier "is ORDERED to pay benefits in accordance with this decision, the Texas Workers' Compensation Act, and the Commission's Rules."

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Judy L. Stephens
Appeals Judge