

APPEAL NO. 001653

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 14, 2000. The issue at the CCH was whether the appellant (claimant) is entitled to supplemental income benefits (SIBs) for the second quarter. The hearing officer determined that the claimant is not entitled to SIBs for the second quarter. The claimant appeals, raising a number of evidentiary objections, disagreeing with a number of findings of fact and the resulting conclusion of law concerning entitlement to SIBs, and requests that the Appeals Panel reverse the hearing officer's decision and allow payment of SIBs for the second quarter. The appeal file contains no response from the respondent (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 Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on June 27, 2000, under a cover letter of the same date.

The claimant states in her appeal that she received a copy of the hearing officer's decision on July 5, 2000. However, 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 July 2, 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 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 Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998. We note that the return address on the envelope which contained the claimant's appeal is the same as the address to which the hearing officer's decision was sent. The claimant offers no evidence that the hearing officer's decision was misdelivered.

The claimant had 15 days from the deemed date of receipt, or until Monday, July 17, 2000, to mail her request for review to the Commission. The claimant's certificate of service on the Commission and the carrier on July 18, 2000, and the USPS adhesive sticker on the envelope in which the claimant's appeal was mailed indicates that postage was paid on July 18, 2000. The claimant's appeal is untimely, having been 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.

Alan C. Ernst
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge