

APPEAL NO. 001962

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 8, 2000. The issues at the CCH were whether the appellant (claimant) is entitled to supplemental income benefits (SIBs) for the first through fifth compensable quarters. The hearing officer determined that the claimant is not entitled to SIBs for the first through the fifth compensable quarters and, since she has not been entitled to SIBs for 12 consecutive months, she has permanently lost entitlement to SIBs for this claim. The claimant appeals, contending that she had surgery which was done incorrectly and she had severe pain and was unable to work. She discusses problems she had with some of her doctors. The respondent (carrier) responds that the hearing officer's determinations are correct because the claimant failed to meet her burden of proving that she had no ability to work during the quarters in question.

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 with or mailed to the Texas Workers' Compensation Commission (Commission) not later than the 15th day after the date of receipt of the hearing officer's decision. Rule 143.3(c)(2) provides that to be timely an appeal must be received by the Commission or the other party not later than the 20th 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 July 6, 2000, under a cover letter of the same date. The claimant says in her appeal that she received the hearing officer's decision on July 8, 2000. The claimant had 15 days, or until Monday, July 24, 2000, the 15th day having fallen on a Sunday (Rule 102.3(a)(3)) to mail her appeal to the Commission.

Dispute Resolution Information System notes in the appeal file indicate that, upon receiving the appeal, the claimant made an appointment to see her ombudsman on July 21, 2000, which was changed to July 12, 2000; that the claimant met on July 12, 2000, with her ombudsman and a Spanish-language translator; and that the claimant was given an appeals form in Spanish and was advised of the deadline for filing an appeal. The carrier's response states that the attorney for the carrier received the claimant's appeal on July 31, 2000, but does not state when the carrier received the appeal. A check mark on the claimant's undated certificate of service indicates that a copy of the appeal was served on the carrier or its attorney by certified mail but no check mark is placed by a form for an equivalent statement for service on the Commission. The carrier's response was received by the Commission on August 18, 2000. On August 22, 2000, apparently at the request of the Commission's Hearings Division, the carrier faxed a copy of the claimant's appeal to

the Hearings Division. There is nothing in the appeal file indicating that the Commission received a copy of the claimant's appeal from the claimant.

The claimant had, as previously noted, until Monday, July 24, 2000, to mail her appeal to the Commission. There is no evidence claimant's appeal was sent to the Commission until the carrier faxed a copy on August 22, 2000. The claimant's appeal is thus untimely.

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.

Gary L. Kilgore
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Judy L. Stephens
Appeals Judge