

APPEAL NO. 001972

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 18, 2000. The hearing officer determined that the appellant (claimant beneficiary) has not exhausted the advance benefits from a third party recovery requiring respondent (carrier) to resume paying death benefits. Claimant beneficiary appeals this determination and carrier responded urging that claimant beneficiary's appeal was untimely and also that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

Claimant beneficiary did not file her appeal within the time period required by the rules of the Texas Workers' Compensation Commission (Commission). Therefore, the appeal did not invoke the Appeals Panel's jurisdiction and the hearing officer's decision and order have become final pursuant to Section 410.169.

The Commission's records show that the hearing officer's decision was first mailed to claimant beneficiary at an incorrect address on July 10, 2000. On July 28, 2000, the decision was re-mailed to "[claimant beneficiary], (address)." Claimant beneficiary does not dispute that this was the last address provided by her to the Commission. Claimant beneficiary's request for review indicates that she did not receive the hearing officer's decision and order because it was mailed addressed to the deceased employee in this death benefits case, rather than to claimant beneficiary. However, Commission records do not support this assertion. Claimant beneficiary further asserts that the July 28, 2000, mailed decision was returned to the Commission undelivered because it was not addressed to claimant beneficiary. Commission records show that the first copy of the decision, which was mailed to the wrong address, was returned to the Commission. However, Commission records do not support the assertion that the copy of the decision and order mailed to claimant beneficiary on July 28, 2000, at her last known address, was returned to the Commission.

Rule 102.5(d) (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d)), as amended effective August 29, 1999, provides that, unless the great weight of evidence indicates otherwise, a claimant is deemed to have received the hearing officer's decision five days after it was mailed, or on Wednesday, August 2, 2000. A request for review is timely if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and if it is received by the Commission not later than the 20th day after the date of receipt of the decision. Rule 143.3(c). In this instance, the 15th day after the deemed date of receipt was Tuesday, August 17, 2000. Claimant beneficiary's request for review was dated August 23, 2000, and was mailed that same day. This was beyond the fifteenth day following the deemed date of receipt of the hearing officer's decision. Therefore, claimant beneficiary's appeal is untimely.

Because claimant beneficiary did not file her request for review on time, the request for review did not properly invoke the Appeals Panel's jurisdiction. The hearing officer's decision and order became final pursuant to Section 410.169 and Rule 142.16(f).

Judy L. Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge