

APPEAL NO. 002369

Following a contested case hearing held on September 6, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the appellant (claimant herein) was not entitled to supplemental income benefits for the fifth compensable quarter. The claimant appeals arguing that the hearing officer erred in finding that the claimant had an ability to work during the qualifying period for the fifth compensable quarter and in finding the claimant did not make a good faith effort to obtain employment. The claimant complains that the hearing officer erred in admitting medical records which were not properly exchanged and which were from medical service providers not listed by the respondent (carrier herein) as having knowledge of relevant facts. The carrier responds that the decision of the hearing officer is supported by the evidence.

DECISION

A timely request for review not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

The records of the Texas Workers' Compensation Commission (Commission) reflect that the decision of the hearing officer was distributed on September 13, 2000, under a cover letter of the same date. The claimant does not state in her request for review the date she received the decision of the hearing officer, but pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the claimant was deemed to have received the hearing officer's decision five days later, or on Monday, September 18, 2000, unless the great weight of the evidence indicates otherwise. Pursuant to Section 410.202, a request for review must be filed within 15 days of receipt of the hearing officer's decision. Rule 143.3(c) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and is received by the Commission not later than the 20th day after receipt of the hearing officer's decision. Both requirements of Rule 143.3(c) must be met in order for a request for review to be timely filed. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; and Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994. The last day for the claimant to have timely filed her appeal by mail was Tuesday, October 3, 2000, for the mailing¹ and Monday, October 9, 2000, for the receipt.² Claimant's request for review is undated but does contain a certificate of service

¹We note that the claimant in her appeal states that the last day for mailing her appeal is October 3, 2000.

²The 20th day was actually Sunday, October 8, 2000, but pursuant to Rule 102.3(a)(3) would be extended to the next working day. October 9, 2000, was not a state holiday, but was a national and mail holiday; arguably, this might further extend the deadline until October 10, 2000. However, we need not reach the question of the effect of Columbus Day as the claimant's appeal was not received until October 12, 2000.

on the carrier stating the date of September 29, 2000. The postmark date on the envelope containing the claimant's request for review is not clearly legible, but appears to be September 28, 2000. However, the Commission's date stamp on the envelope reflects receipt by the Commission on October 12, 2000, which is outside the 20-day period following the claimant's receipt of the decision. Accordingly, the claimant's request for review is untimely and has not invoked the jurisdiction of the Appeals Panel.

The claimant's appeal not having been timely filed, the decision and order of the hearing officer have become final. Section 410.169.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge