

## APPEAL NO. 002660

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 August 7, 2000, with the record closing on October 4, 2000. With regard to the only issue before him, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits for the fourth compensable quarter.

The claimant appealed, asserting a total inability to work as supported by certain medical records. The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The appeal file does not contain a 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.

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was mailed to the claimant on October 23, 2000, under a cover letter of the same date. The claimant does not indicate when she received a copy of the hearing officer's decision. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), as amended August 29, 1999, 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 October 28, 2000.

Section 410.202(a) provides that a request for appeal shall be filed not later than the 15th day after the date on which the hearing officer's decision is received. Rule 143.3(c) provides that a request for appeal is presumed to have been timely filed if it is mailed on or before 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 the date the hearing officer's decision is received. Fifteen days after October 28, 2000, would be Sunday, November 12, 2000. Pursuant to Rule 102.3(a)(3), if the last day of any period is not a working day, the period is extended to include the next day that is a working day, or in this case November 13, 2000. The last day for the claimant's appeal to have been timely mailed was Monday, November 13, 2000. The envelope which contained the claimant's appeal shows a postage meter date of November 13, 2000, but also shows a postmark of November 14, 2000 and shows the appeal as received by the Commission on November 16, 2000. We consider the date mailed as being the date postmarked by the U.S. Postal Service rather than the date run in the office postage meter, and therefore the claimant's appeal is untimely. If the certified mail return receipt shows a U.S. Postage Service receipt stamp of November 13, 2000, or earlier, the claimant may request reconsideration.

The claimant's appeal being untimely, the decision of the hearing officer has become final. Section 410.169.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge