

APPEAL NO. 002773

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 September 25, 2000. With regard to the issues before her, the hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the eighth quarter and that the appellant (self-insured) waived its right to contest the claimant's entitlement to the eighth quarter of SIBs by failing to timely request a benefit review conference.

The self-insured appealed, contending that the hearing officer's decision is not supported by the evidence. The self-insured requests that we reverse the hearing officer's decision and render a decision in its favor. The appeal file does not contain a response from the claimant.

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 received by the self-insured's Austin representative on November 10, 2000.

Pursuant to Section 410.202(a), for an appeal to be considered timely, it must be filed or mailed within 15 days of the date of receipt of the hearing officer's decision. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (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 received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994.

Fifteen days from the self-insured's receipt of the hearing officer's decision would have been Saturday, November 25, 2000. Pursuant to Rule 102.3(a)(3), if the last day of the period is not a working day, as defined in Rule 102.3(b) the period is extended to the next working day, or, in this case, Monday, November 27, 2000. The self-insured's cover letter and certificate are both dated November 27, 2000, and the envelope containing the self-insured's appeal is also postmarked November 27, 2000. Therefore, the appeal was mailed within the required 15 days.

However, the self-insured's appeal was not received by the Commission within 20 days after the self-insured's receipt of the hearing officer's decision, or by November 30,

2000. The Commission received the self-insured's appeal on December 4, 2000. The self-insured's appeal is untimely, having been received by the Commission after the 20-day deadline (November 30, 2000) set by Rule 143.3(c)(2).

The self-insured's appeal being untimely, the decision and order of the hearing officer have become final. Section 410.169.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge