

APPEAL NO. 010021

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a hearing held on November 14, 2000, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first, second, and third quarters and that the respondent/cross-appellant (carrier) is not relieved of liability for SIBs for these quarters on the basis of the claimant's late filing of her applications. The claimant has appealed the adverse SIBs determinations and the carrier filed a conditional appeal. Both parties filed responses.

DECISION

A timely appeal not having been filed by the claimant with the Texas Workers' Compensation Commission (Commission) and the carrier's appeal being conditioned on there being an appeal by the claimant which properly invokes the jurisdiction of the Appeals Panel, the decision and order of the hearing officer have become final.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c)(Rule 143.3(c)) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) 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 for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994.

Records of the Commission reflect that the hearing officer's decision was distributed to the parties on December 8, 2000, under a cover letter of the same date. Rule 102.5(d), effective August 29, 1999, provides that, 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, which in this case would be December 13, 2000. However, in her appeal the claimant states that she received the hearing officer's decision on December 12, 2000, and, therefore, we count the claimant's 15 days to mail and 20 days to be received from December 12, 2000. The envelope containing the claimant's appeal reflects that it was timely mailed on December 27, 2000, which is 15 days after December 12. The 20 days after December 12, 2000, was January 1, 2001, a holiday, and, thus, the claimant's 20-day deadline for receipt of her appeal by the Commission was extended to January 2, 2001. However, the claimant's appeal was not received by the Commission until January 3, 2001, and was, thus, untimely.

The hearing officer's decision and order have become final pursuant to Section 410.169.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Gary L. Kilgore
Appeals Judge