

## APPEAL NO. 010115

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 December 15, 2000. The parties resolved the only disputed issue by reaching an agreement that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter. In his appeal, the claimant argues for relief from the agreement and requests that we render a decision in his favor on his entitlement to first quarter SIBs. In its response to the claimant's purported appeal, the respondent (carrier) urges affirmance.

### DECISION

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

Pursuant to Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §143.3(c) (Rule 143.3(c)), an appeal is presumed to be timely 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 Texas Workers' Compensation Commission (Commission) not later than the 20th day after 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. Records of the Commission show that the hearing officer's decision was mailed to the claimant on December 20, 2000, under a cover letter of the same date. The claimant states that he did not receive the hearing officer's decision until December 29, 2000; however, in accordance with Rule 102.5(d), he was deemed to have received it five days after it was mailed or on December 25, 2000. Under the previous version of Rule 102.5, the Appeals Panel held that, where Commission records show mailing on a particular day to the correct address, a mere statement that the decision was not received until a later date is not sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998. Accordingly, the claimant had 15 days, or until Tuesday, January 9, 2001, to timely file his request for review with the Commission. The claimant's appeal is postmarked January 14, 2001, well beyond the point that the 15-day period expired. Accordingly, the appeal is untimely, having been sent to the Commission more than 15 days after the deemed date of receipt of the hearing officer's decision.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer have become final under Section 410.169.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Kenneth A. Huchton  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge