

APPEAL NO. 010736

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 February 5, 2001. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits for the third and fourth quarters. The claimant appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision has become final under Section 410.169 because the claimant's request for appeal was not timely filed with the Texas Workers' Compensation Commission (Commission).

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 appeal 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 in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002659, decided December 12, 2000. Rule 102.5(d) provides, in part, that for purposes of determining the date of receipt for those written communications sent by the Commission which require the recipient to perform an action by a specific date after receipt, unless the great weight of evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed. The Appeals Panel has held that a signed acknowledgment of an earlier date of receipt prevails over the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 992016, decided October 28, 1999.

Records of the Commission reflect that the hearing officer's decision was mailed to the claimant on March 8, 2001. The claimant states in her appeal that she received the hearing officer's decision on or about March 11, 2001. The 15th day after March 11, 2001, was Monday, March 26, 2001. The envelope in which the claimant's appeal was mailed to the Commission contains a USPS postage-paid sticker of April 5, 2001. We conclude that the claimant's appeal was not timely filed with the Commission because it was mailed after March 26, 2001. The claimant's appeal would also be untimely using the five-day deemed receipt rule. Section 410.169 provides that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

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

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge