

APPEAL NO. 010932  
FILED JUNE 7, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on April 4, 2001, resolved the disputed issue by determining that the appellant (claimant) is not entitled to supplemental income benefits for the 20th quarter. The claimant has filed an appeal of this determination on evidentiary grounds. The respondent (carrier) has filed a response asserting that the Texas Workers' Compensation Commission (Commission) Appeals Panel lacks jurisdiction over the appeal because it was not timely filed.

DECISION

A timely appeal not having been filed by the claimant with the Commission and the jurisdiction of the Appeals Panel not having been properly invoked, the decision and order of the hearing officer have become final.

Section 410.202(a) provides that "to 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. 010112, decided February 12, 2001.

Records of the Commission reflect that the hearing officer's decision was distributed to the parties on April 6, 2001, under a cover letter of the same date. The claimant states that he received the decision on April 11, 2001, five days later. Applying Rule 143.3(c), the last day for the claimant's appeal to have been timely mailed was April 26, 2001, and the last day for it to have been timely received by the Commission was May 1, 2001. The claimant's certificate of service states that he mailed his appeal to the Commission on April 30, 2001. The envelope containing the appeal bears date stamps reflecting that it was mailed on April 30, 2001, and was received at the Commission on May 3, 2001. Accordingly, the appeal was not timely filed.

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

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Michael B. McShane  
Appeals Judge