

APPEAL NO. 011122
FILED JULY 03, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 3, 2001. With respect to the issues before him, the hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the 15th and 16th compensable quarters. The appellant (carrier) appeals sufficiency grounds and urges that the Appeals Panel reverse and render a decision that the claimant is not entitled to 15th and 16th quarter SIBs. There is no response from the claimant in the record.

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(a) of the 1989 Act, for an appeal to be considered timely, it must be filed 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 Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Rule 143.3(c). 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.

Pursuant to Rule 156.1, a carrier shall designate an Austin representative to act as its agent for receiving notice from the Commission and any notice to the Austin representative of the carrier is notice from the Commission to the carrier. See (Rule 156.1); Texas Workers' Compensation Commission Appeal No. 010406, decided April 1, 2001; Texas Workers' Compensation Commission Appeal No. 93327, decided June 3, 1993.

Records of the Commission reflect that the hearing officer's decision was distributed to the parties on April 27, 2001, under a cover letter of the same date, and signed for by the carrier's representative April 30, 2001. Therefore, we count the carrier's 15-day period to mail and the 20-day period for receipt from April 30, 2001.

The carrier had 15 calendar days from April 30, 2001, or until Tuesday, May 15, 2001, to mail its request for review to the Commission. The appeal still had to be received within 20 calendar days, and the 20th day was Sunday May 20, 2001, therefore the appeal had to be received by Monday May 21, 2001. The carrier's appeal bears a date of May 15, 2001, and the envelope bears a postmark of May 15, 2001, so mailing of the appeal was

timely. However, the appeal was not received by the Commission until May 23, 2001. Therefore, the carrier's appeal is untimely.

The decision and order of the hearing officer have become final under Section 410.169.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge