

APPEAL NO. 012274
FILED OCTOBER 24, 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 was held on August 7, 2001. She determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 1st through 13th compensable quarters. On appeal, the claimant expresses disagreement with this determination. The respondent (carrier) urges that the claimant's appeal was filed untimely and, therefore, should be dismissed. Alternatively, the carrier urges affirmance.

DECISION

We affirm.

The carrier contends that the claimant's request for review was not timely filed. Pursuant to Section 410.202(a), for an appeal to be considered timely, it must be filed or mailed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). 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. 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.

Commission records indicate that the hearing officer's decision and order was mailed to the claimant on August 17, 2001, however, the claimant's apartment number, which had been provided to the Commission, was omitted from the address and the envelope containing the decision was returned to the Commission on August 24, 2001. On August 29, 2001, the claimant telephoned the Commission requesting information about her appeal and a copy of the hearing officer's decision was faxed to her on the same day. Therefore, due to the Commission's mailing error, the claimant did not receive the decision until August 29, 2001, and she had 15 days, as prescribed by Section 410.202, in which to file her appeal. The claimant's appeal was mailed on September 13, 2001, which was within the time period allowed. The deadline for receipt of the appeal by the Commission was September 25, 2001, and a copy was received on that day. Therefore, the appeal is timely.

The claimant contends that she is entitled to SIBs for the quarters in question because during the corresponding qualifying periods she had no ability to work. Rule 130.102 provides that an injured employee who has an impairment rating of 15% or greater and who has not commuted any impairment income benefits is entitled to SIBs if, during

the qualifying period, the claimant has earned less than 80% of the employee's preinjury wage as a direct result of the impairment from the compensable injury and has made a good faith effort to obtain employment commensurate with the employee's ability to work. Rule 130.102(d)(4) states that the "good faith" criterion will be met if the employee:

has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

We have emphasized that a finding of no ability to work is a factual determination of the hearing officer which is subject to reversal on appeal only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Texas Workers' Compensation Commission Appeal No. 951204, decided September 6, 1995; Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Applying this standard we find no ground to reverse the decision of the hearing officer. The hearing officer determined that the claimant had some ability to work during the relevant qualifying periods and did not find that the evidence contained a narrative within the meaning of Rule 130.102(d)(4). Consequently, the hearing officer found that the claimant had not made a good faith effort to find employment commensurate with her ability to work during the qualifying periods and is not entitled to SIBs for the 1st through 13th quarters. We are satisfied that the evidence sufficiently supports the hearing officer's decision.

Accordingly, the decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ROYAL INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge