

APPEAL NO. 012305  
FILED OCTOBER 31, 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 June 20, 2001, the hearing officer concluded that the appellant/cross-respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth and sixth quarters; that the respondent/cross-appellant (carrier) is relieved from liability for the entire fifth quarter because of the claimant's failure to file a SIBs application for that quarter; that the carrier is relieved from liability for the sixth quarter period from March 23 through March 28, 2001, because of the claimant's failure to timely file her sixth quarter SIBs application; and that the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c) because she was not entitled to SIBs for 12 consecutive months. The claimant has appealed these determinations on evidentiary sufficiency grounds. The carrier filed a "Conditional Appeal," urging that, in the event the claimant filed an appeal, the carrier appeals the findings that the claimant's underemployment during the fifth and sixth quarter filing periods was a direct result of her impairment from the compensable injury. The carrier filed a response to the claimant's appeal. The file does not contain a response to the carrier's conditional appeal.

Following receipt of the appeal and cross-appeal, we remanded the hearing officer's Decision and Order in Texas Workers' Compensation Commission Appeal No. 011675, decided August 23, 2001, for the hearing officer to comply with the provision of House Bill 2600 amending Section 410.164, effective June 17, 2001. The hearing officer has complied with the remand direction in her Decision and Order on Remand signed September 11, 2001. Following her receipt of the hearing officer's remand decision, the claimant filed with the Texas Workers' Compensation Commission (Commission) the blue information brochure entitled "Review of claims Disputes by the Commission's Appeals Panel." (Brochure) and signed the brochure in the sample service part of the brochure. The brochure contains instructions and Commission rules pertaining to the filing of appeals and responses to appeals and the claimant did not attach to the document either a copy of the appeal she previously filed or a new appeal. The carrier filed a response urging that the claimant failed to file a document which qualified as an appeal; that the claimant failed to serve a copy of the document on the carrier who was eventually provided a copy by a Commission employee; and that the evidence was sufficient to support the hearing officer's determinations. The carrier also filed a conditional appeal of the hearing officer's "direct result" findings relating to the statutory requirements for entitlement to SIBs for the eighth and ninth quarters. The file does not contain a response to the carrier's conditional appeal.

DECISION

Determining that the claimant has not timely filed a request for review which properly invokes the jurisdiction of the Appeals Panel, and that the condition which could activate the carrier's appeal has not been met, the decision of the hearing officer has become final pursuant to Section 410.169.

The final paragraph in our remand decision (Appeal No. 011675) advised the parties that “since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission’s Division of Hearings, pursuant to Section 410.202 (amended June 17, 2001).”

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.” Section 410.202(c) provides that “[a] request for appeal or a response must clearly and concisely rebut or support the decision of the hearing officer on each issue on which review is sought.” The hearing officer’s Decision and Order on Remand was mailed to the claimant on September 14, 2001, and she is deemed to have received it five days later, September 19, 2001, under Tex. W.C. Comm’n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)). While her mailing of the document on September 24, 2001, and its receipt by the Commission on September 27, 2001, would give rise to a presumption of timely filing under Rule 142.3(c), nowhere in the document does the claimant indicate any dispute or disagreement with any parts of the hearing officer’s remand decision nor does she indicate that she requests the remand decision to be reviewed for any purpose. While the Appeals Panel has liberally construed Section 410.201(c) to permit simple statements of disagreement with hearing officer decision to suffice as requests for appeal, the brochure filed by the claimant cannot be considered as a request for appeal. We have previously held likewise with respect to the filing of such brochure in Texas Workers’ Compensation Commission Appeal No. 93998, decided December 14, 1993, and Texas Workers’ Compensation Commission Appeal No. 94973, decided September 1, 1994; and Texas Workers’ Compensation Commission Appeal No. 012227 decided October 17, 2001.

Prior to the remand, the evidence was reviewed and it would support the hearing officer’s determinations. We need not consider the merits of the carrier’s conditional appeal since the claimant has not filed a timely appeal. Since a request for appeal of the hearing officers’ decision has not been filed within the statutory time periods for filing an appeal, the decision of the hearing officer has become final under Section 410.169.

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

**JIM ADAMS  
450 GEARS RD  
HOUSTON, TX 77067.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge