

APPEAL NO. 020854
FILED MAY 9, 2002

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 March 6, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appeals the determination on sufficiency grounds. The respondent (carrier) asserts that the claimant's appeal was not timely filed and, in the alternative, urges affirmance.

DECISION

Affirmed.

TIMELY APPEAL

A request for review is timely if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and if it is received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the decision. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)). Saturdays, Sundays, and holidays listed in Section 662.003, Government Code, are not included in the computation of the time in which a request for appeal must be filed. Section 410.202(d). The claimant states in her appeal that she received the hearing officer's decision on March 16, 2002. Accordingly, the last date for the claimant to timely file her appeal was April 8, 2002, and her appeal would have to be received by the Commission on April 15, 2002. The appeal was postmarked on April 5, 2002, and stamped as received by the Commission on April 9, 2002. The claimant's appeal is, therefore, timely.

FIRST QUARTER SIBs

The hearing officer did not err in determining that the claimant is not entitled to first quarter SIBs. At issue is whether the claimant made a good faith effort to seek employment commensurate with her ability to work. This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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

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

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge