

APPEAL NO. 042083
FILED OCTOBER 18, 2004

Following a contested case hearing held on July 22, 2004, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the appellant (claimant herein) was not entitled to supplemental income benefits (SIBs) for the third quarter. The claimant appeals, arguing that the hearing officer's decision was contrary to the evidence. The respondent (carrier herein) responds that the claimant's appeal is untimely and that the evidence supports the decision of the hearing officer.

DECISION

A timely request for review 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), a written request for appeal must be filed 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 Section 662.003 of 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(e) (Rule 143.3(e)) 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(e) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

The records of the Commission reflect that the decision of the hearing officer was distributed on July 29, 2004, under a cover letter of the same date. The claimant states in her request for review that she received the decision of the hearing officer on August 4, 2004. Under Rule 102.5(d), unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision 5 days after it was mailed. Also, the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt provided by Commission rule. See Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002. Thus, the claimant was deemed to have received the hearing officer's decision on August 3, 2004.

The claimant's appeal needed to be filed no later than August 24, 2004, the 15th day from the deemed date of receipt. The claimant's appeal was sent by facsimile

transmission to the Commission and received by the Commission at 5:03 p.m. on August 25, 2004. The appeal is stamped received on August 26, 2004, as it was received after 5:00 p.m. See Rule 102.3(d); Texas Workers' Compensation Commission Appeal No. 032729, decided December 1, 2003. Thus, the claimant's appeal was untimely because it was filed later than August 24, 2004.

The claimant's appeal not having been timely filed, the decision and order of the hearing officer have become final. Section 410.169.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Veronica L. Ruberto
Appeals Judge