

APPEAL NO. 950329

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. § 401.001, *et seq.* On January 18, 1995, a contested case hearing was convened in (city), Texas, with (hearing officer) presiding. The issues under the first docketed proceeding were claimant's correct impairment rating (IR), whether claimant was entitled to supplemental income benefits (SIBS) for the first compensable quarter, and whether carrier could credit any overpayment of impairment income benefits (IIBS). The issue in the second proceeding was whether claimant was entitled to SIBS for the second compensable quarter.

The hearing officer found that claimant's IR was 20%, that he was entitled to SIBS for the first compensable quarter because the carrier failed to timely dispute that quarter, and that during the hearing the overpayment issue was withdrawn from consideration by agreement of the parties. In his decision for the second proceeding, the hearing officer found that claimant was not entitled to SIBS for the second compensable quarter because he did not in good faith seek employment commensurate with his ability to work.

The claimant has appealed the second decision and fact findings common to both decisions. The carrier responds that the appeal is untimely, and that the decision should be affirmed.

DECISION

The hearing officer's decisions have become final by operation of law, because claimant did not timely file an appeal.

According to the records of the Texas Workers Compensation Commission (Commission), the decisions in question were distributed to the parties on February 8, 1995.

Texas W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)) states that:

For purposes of determining the date of receipt for those notices and other written communications which require action by a date specific after receipt, the commission shall deem the received date to be five days after the date mailed.

By operation of Rule 102.5(h), claimant is deemed to have received the decisions on February 13, 1995.

Section 410.202 states that a written request for appeal with the Appeals Panel must be filed "not later than the 15th day after the date on which the decision of the hearing officer is received . . ." The fifteenth day after Tuesday, February 13th was February 28, 1995.

Two copies of claimant's appeal show that one copy was transmitted by facsimile transmission on March 3rd; another copy of the appeal was mailed March 4th, and received March 6th. Both are untimely.

Section 410.169 provides that the hearing officer's decision becomes final in the absence of a timely appeal by a party.

Because no timely appeal was filed, the decisions of the hearing officer have become final by operation of law, and the Appeals Panel does not have jurisdiction to consider the appeals filed by the claimant.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge