

APPEAL NO. 962426  
FILED JANUARY 8, 1997

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 October 23, 1996. The hearing officer determined that the respondent (claimant) did not make a good faith job search. However, the hearing officer also determined that the claimant was entitled to supplemental income benefits (SIBS) for the eighth compensable quarter because the appellant (carrier) waived its right to contest continuing entitlement to SIBS by failing to file its Request for Setting Benefit Review Conference (TWCC-45) with the field office managing the claim within the 10-day period provided for doing so in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.108(c) (Rule 130.108(c)). In its appeal, the carrier maintains that its filing of a TWCC-45 in a field office other than the one managing the claimant's claim was sufficient to satisfy the requirements of Rule 130.108(c). In his response, the claimant urges affirmance. The claimant did not appeal the determination that he did not make a good faith job search in the filing period for the eighth quarter and that determination has become final pursuant to Section 410.169.

DECISION

Affirmed.

Our factual recitation in this case will be abbreviated because only the procedural issue of whether the carrier timely filed its TWCC-45 is before us on appeal. Under Rule 130.108(c), a carrier waives its right to contest continuing entitlement to SIBS if it fails to request a benefit review conference (BRC) within 10 days of its having received the claimant's Statement of Employment Status (TWCC-52). The parties stipulated that the carrier's TWCC-45 was filed in the (city 1) field office of the Texas Workers' Compensation Commission (Commission) within 10 days after it received the claimant's TWCC-52. However, the TWCC-45 was not received in the (city 2) field office, the field office where it is undisputed that the claimant's claim was being managed, within the 10-day period. The hearing officer determined that, under those facts, the carrier had waived its right to contest the claimant's entitlement to SIBS, finding that a timely filing of a TWCC-45 in a field office other than the field office handling the claimant's claim is insufficient to satisfy the requirements of Rule 130.108(c).

Rule 102.5(g) states:

Unless otherwise specified by rule, forms, notices, and other written communications required to be filed with the commission shall be directed to the local commission field office managing the claim.

Rule 141.1(b) provides, in relevant part, that a request for a benefit review conference

(BRC) shall be "sent to the commission." As the hearing officer noted, Rule 141.1 does not specify the location where the request for a BRC is to be sent. Therefore, in accordance with the mandatory language of Rule 102.5(g), that request was to be "directed to the local commission field office managing the claim." Accordingly, we find no merit in the carrier's argument that, by filing the TWCC-45 in the (city 1) field office within 10 days of the date that it received the claimant's application for eighth quarter SIBS, it had satisfied the requirements of Rule 130.108(c) in that it simply does not find support in the statute or the rules. Although the result in this instance may appear to be harsh, we believe that the rationale for our decision can be gleaned from a consideration of the purpose of the 10-day requirement, namely the avoidance of prolonged interruptions in the flow of benefits. In Texas Workers' Compensation Commission Appeal No. 951264, decided September 8, 1995, the Appeals Panel spoke to the question of whether the request for a BRC had to be received by the Commission within the 10-day period or if a carrier's mailing of the TWCC-45 within the 10-day period was sufficient. Relying on the unpublished decision in Texas Workers' Compensation Commission Appeal No. 950773, decided June 29, 1995, the Appeals Panel determined that the date of receipt and not mailing was controlling. In so doing, the Appeals Panel noted that, in that area of SIBS, the 1989 Act contemplates "an orderly and prompt procedure for requesting and disputing SIBS . . . where penalties are provided in the event of either party's noncompliance (waiver of the right to contest entitlement if the carrier does not timely dispute, and relief from liability for SIBS on the part of the carrier if the claimant does not file a statement of employment status; see Section 408.143; Texas Workers' Compensation Commission Appeal No. 94335, decided May 6, 1994)"; see *also* Texas Workers' Compensation Commission Appeal No. 951351, decided September 27, 1995, (late filing of TWCC-52 precludes a claimant from collecting SIBS until it is filed). Finally, we note that, although it is not a controlling factor, the importance of requiring filing in the field office managing the claim cannot be overemphasized in terms of its impact on administrative efficiency. Where, as here, the carrier is contesting continuing entitlement to SIBS, there is an overriding concern under the 1989 Act that there not be long periods of time where a deserving claimant remains uncompensated. To that end, the carrier was given a relatively short time period to put the claimant's SIBS entitlement at issue. If that requirement could be satisfied by filing a request in any field office, the effectiveness of the 10-day waiver provision would be substantially undermined.

In its appeal, the carrier asserts that, on the face of the TWCC-45, it states "[t]he form should be filed with the field office handling the claim. Failure to file the form with the appropriate filed office may delay processing." Thus, it maintains that, if the Commission had intended the failure to file the form in the proper field office to result in a waiver of the right to contest, cautionary language to that effect would have been included on the form. We cannot agree with this assertion. Initially, we note that the TWCC-45 in evidence does not include the cautionary language referenced by the carrier. However, its presence or absence is of limited significance because, whether or not the form contains instructions or cautionary language, the form cannot operate to change the requirements of the rules which specify that the BRC request be filed in the field office managing the claim.

Finally, the carrier analogizes this case to the cases where the Appeals Panel has stated that a timely filing of a Request for Review in the field office is sufficient to trigger our jurisdiction, despite the language in Rule 143.3 providing that an appeal is to be filed in the Central Office. The carrier maintains that, in accordance with the reasoning in those cases, its timely filing of a TWCC-45 in (city 1) should suffice for purposes of satisfying the 10-day requirement. We cannot agree that the decisions cited by the carrier compel a decision that the timely filing of a TWCC-45 in the wrong field office is effective to satisfy the requirements of Rule 130.108(c). Any seeming inconsistency in these outcomes is explained by the procedural posture of this case, the carrier's attempt to discontinue benefits prior to Commission involvement, as opposed to the procedural posture of appealing a Commission decision on entitlement to benefits.

The hearing officer's decision and order are affirmed.

---

Elaine M. Chaney  
Appeals Judge

CONCUR:

---

Tommy W. Lueders  
Appeals Judge

---

Christopher L. Rhodes  
Appeals Judge