

APPEAL NO. 990419

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 3, 1999, a hearing was held. He (hearing officer) determined that the respondent (claimant) did not attempt in good faith to find work during the filing period of the first compensable quarter, but that the appellant (carrier) did not timely request a benefit review conference (BRC) to contest payment of supplemental income benefits (SIBS), so claimant is entitled to SIBS for the first quarter. Carrier asserts that the Texas Workers' Compensation Commission (Commission) erred in initially determining that claimant was entitled to SIBS for the first quarter and that in notifying carrier of such entitlement, the Commission did not enclose a copy of the claimant's Statement of Employment Status (TWCC-52) and supporting documentation. Claimant replied that the decision should be affirmed.

DECISION

We affirm.

Claimant worked for (employer) on _____, when, she testified, she fell into a hole and injured her neck, low back, and knees. She has had surgery twice to her right knee. She also stated that she attended work hardening during part of the filing period in issue. The parties stipulated that there is a compensable injury, that the impairment rating is 15% or greater, that no benefits were commuted, that claimant had no earnings during the filing period, that the filing period for the first quarter began on August 1, 1998, that claimant made no job search in the filing period, and that the Commission initially determined that claimant was entitled to SIBS for the first quarter.

The hearing officer determined that claimant's unemployment during the filing period in question was a direct result of the impairment, that claimant had some ability to work during that time, and that claimant did not attempt in good faith to find work during that period. None of these findings of fact were appealed.

The appeal addresses the determination that carrier waived the right to contest entitlement to SIBS for the first quarter. There was no dispute that carrier received the Commission's determination of entitlement to first quarter SIBS on November 5, 1998, and there was no dispute that carrier filed its request for a BRC in disputing entitlement on November 24, 1998. (The period of time involved was more than 10 days.) Carrier first asserts that the Commission incorrectly determined that SIBS were due. Even if the Commission were shown to have gone about the process incorrectly or reached an incorrect initial determination, that does not mean that the carrier was not obligated to file a timely dispute if it wished to dispute those points or any other point regarding whether claimant is entitled to the first quarter of SIBS.

Carrier also states that the Commission did not include a copy of the TWCC-52 and supporting documents in the determination it provided to the carrier. Carrier argued both at

the hearing and on appeal that the "Masters Operation Manual" calls for sending a copy of the TWCC-52 to the carrier with the initial determination. The hearing officer queried carrier as to whether the Texas Administrative Code (Commission rules) required the Commission to follow the "Masters Operation Manual" and was answered to the effect that no rule so requires. We do not disagree with that answer.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.103(c) (Rule 130.103(c)) provides that the Commission will determine entitlement or nonentitlement to SIBS and "send written notice of this determination to the injured employee and the carrier" Rule 130.103(d) then provides what the notice shall state when entitlement is determined—there is no reference in this rule to a copy of the TWCC-52 or supporting documents. In addition, Rule 130.108(b) addresses contesting entitlement to SIBS and states that a carrier waives the right to contest the initial determination if it fails to request a BRC within 10 days of receipt of the Commission's initial determination. There is no requirement in this rule that the initial determination received should include a copy of the TWCC-52 and supporting documentation. We note also, that Rule 130.108(c) does provide that the 10 days only run against the carrier after it receives a copy of the TWCC-52 when the dispute to be made is against "continuing entitlement," which is not in issue when the Commission determines initial entitlement, as in the case under review. We find no error in the determination that the carrier did not timely dispute entitlement to SIBS for the first quarter. The determination that SIBS for the first compensable quarter are to be paid to claimant is sufficiently supported by the evidence.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Judy L. Stephens
Appeals Judge