

APPEAL NO. 012234  
FILED OCTOBER 25, 2001

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 August 22, 2001. The appellant (carrier) appeals the hearing officer's determinations that the carrier waived its right to contest the respondent's (claimant) entitlement to supplemental income benefits (SIBs) for the first quarter by failing to timely request a benefit review conference (BRC), and that the claimant is entitled to SIBs for the first quarter. The claimant responds, urging affirmance.

DECISION

Affirmed.

The Texas Workers' Compensation Commission (Commission) made the initial determination that the claimant was entitled to first quarter SIBs and sent the "Notice of Entitlement to [SIBs]" to the carrier on April 13, 2001. The date stamp on Carrier's Exhibit No. 3 reflects receipt by the carrier's attorney (and thus by the carrier) on that date. Section 408.147(b) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.108(c) (Rule 130.108(c)) require that a carrier disputing a Commission finding of entitlement to, or the amount of, SIBs for the first quarter shall request a BRC as provided by Rule 141.1 within 10 days of receiving the Commission's determination of entitlement (by April 23, 2001, in this case). The carrier untimely filed its Request for [BRC] (TWCC-45); the form is dated May 1, 2001, and date-stamped as received by the Commission on May 3, 2001. The carrier asserts in its appeal that although it had not received the Application for [SIBs] (TWCC-52) along with the Commission notice of entitlement for the first quarter, it began paying SIBs in good faith. The carrier then asserts that when it received the TWCC-52 and the medical evidence attached thereto, it disputed entitlement to first quarter SIBs. The carrier further asserts that late receipt of the TWCC-52 should excuse the late filing of the TWCC-45. The simple answer to this assertion is found in Rule 130.108(c):

- (c) Insurance Carrier Dispute; First Quarter. If a carrier disputes a commission finding of entitlement to, or amount of, [SIBs] for the first quarter, the insurance carrier shall request a [BRC] as provided by §141.1 of this title (relating to Requesting and Setting a [BRC]) within 10 days after receiving the commission determination of entitlement. **A carrier waives the right to contest the commission's determination of entitlement to, or amount of, [SIBs] for the first quarter if the request is not received by the commission within 10 days after the date the insurance carrier received the determination.** [Emphasis added.]

Rule 130.108(c) provides no excuse for a failure to timely dispute. As we said in Texas Workers' Compensation Commission Appeal No. 950275, decided March 28, 1995,

another case involving application of Rule 130.108(c):

The carrier is **required to react to the receipt of the document**; we believe that the fact that the document is arguably incomplete does not preclude a waiver if the 10-day requirement for requesting a BRC is not met, because such matters of substance are exactly among the matters that should be raised in the requested BRC. [Emphasis added.]

See *also* Texas Workers' Compensation Commission Appeal No. 010861, decided May 30, 2001. The carrier was properly provided notice that the Commission determined that the claimant was entitled to first quarter SIBs. Consequently, the hearing officer did not err in determining that the carrier waived its right to contest the claimant's entitlement to SIBs for the first quarter.

Because we affirm the hearing officer's determination that the carrier waived the right to contest the claimant's entitlement to SIBs for the first quarter, we render no opinion whether there is a sufficient medical narrative that specifically explains how the claimant's compensable injury prevents him from obtaining and retaining employment at his preinjury wage.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ZURICH NORTH AMERICA** and the name and address of its registered agent for service of process is

**GARY SUDOL  
ZURICH NORTH AMERICA  
9330 LBJ FREEWAY, SUITE 1200  
DALLAS, TEXAS 75243.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge