

APPEAL NO. 013185  
FILED FEBRUARY 13, 2002

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 November 30, 2001. The hearing officer determined that appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 4th through 10th quarters. Claimant appealed these determinations on sufficiency grounds and also contends that the hearing officer erred in failing to make a determination that respondent (carrier) waived the right to contest entitlement to SIBs. Carrier responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Regarding claimant's contention that carrier waived the right to contest entitlement to SIBs, we note that this issue was not raised at the hearing and was not tried by consent. The parties would need notice that such an issue was raised so that they could adequately prepare and introduce relevant evidence. Because this issue has been raised for the first time on appeal and was not tried by consent, the hearing officer did not err in failing to address it.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **LUMBERMENS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Robert E. Lang  
Appeals Panel  
Manager/Judge

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Terri Kay Oliver  
Appeals Judge