

APPEAL NO. 021776  
FILED AUGUST 28, 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 June 4, 2002. The hearing officer determined that the appellant (claimant) is entitled to supplemental income benefits (SIBs) for the 9<sup>th</sup>, 10<sup>th</sup>, and 11<sup>th</sup> quarters; and that due to the claimant's late filing of her Application for [SIBs] (TWCC-52) for the 9<sup>th</sup>, 10<sup>th</sup>, and 11<sup>th</sup> quarters, the respondent (carrier) is relieved of liability for the payment of SIBs for the 9<sup>th</sup> and 10<sup>th</sup> quarters in their entirety and the portion of the 11<sup>th</sup> quarter from February 15 to March 24, 2002. The claimant appealed, arguing that the hearing officer erred in determining that the carrier is relieved from liability for SIBs for the 9<sup>th</sup> and 10<sup>th</sup> quarters and a portion of the 11<sup>th</sup> quarter. In its response, the carrier urges affirmance. The hearing officer's determinations that the claimant is entitled to SIBs for the 9<sup>th</sup>, 10<sup>th</sup>, and 11<sup>th</sup> quarters were not appealed and have, therefore, become final pursuant to Section 410.169.

DECISION

Affirmed.

At issue is whether the carrier is relieved of liability for SIBs because of the claimant's failure to timely file a TWCC-52 for each of the SIBs quarters in dispute. The claimant argues on appeal that she did not receive a TWCC-52 from the carrier for any of the SIBs quarters in dispute and that the carrier is, therefore, not relieved from liability for payments of SIBs pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.105(a)(1) (Rule 130.105(a)(1)). Rule 130.105(a)(1) provides that an injured employee who does not timely file a TWCC-52 shall not receive SIBs for the period of time between the beginning date of the quarter and the date on which the form was received by the carrier, unless the carrier fails to timely mail the TWCC-52 as provided by §130.104.

The hearing officer did not err in determining that the carrier tendered a TWCC-52 for the 9<sup>th</sup> quarter to the claimant, by sending the TWCC-52 to the claimant's attorney. The claimant testified that she was represented by attorney A; that attorney A withdrew from representing her; and that, thereafter, she hired attorney B to represent her. The carrier's adjuster testified that prior to the qualifying period for the 8<sup>th</sup> quarter, she received a letter from attorney A informing her to send all communications to him, and to have no further contact with the claimant. Rule 102.4(b) provides that after an insurance carrier, employer, or health care provider is notified in writing that a claimant is represented by an attorney or other representative, copies of all written communications related to the claim to the claimant shall thereafter be mailed or delivered to the representative as well as the claimant, unless the claimant requests delivery to the representative only. The carrier contended that it mailed a TWCC-52 for the 9<sup>th</sup> quarter to attorney A along with its dispute of the claimant's entitlement to 8<sup>th</sup>

quarter SIBs. The hearing officer was persuaded by the adjuster's testimony and determined that the carrier had complied with Rule 102.4(b) by sending the notice of nonentitlement for the 8<sup>th</sup> quarter of SIBs and a TWCC-52 for the 9<sup>th</sup> quarter to attorney A, as evidenced by the green card reflecting delivery on June 6, 2001. The hearing officer commented that "[d]elivery of the TWCC-52 to [the claimant's] attorney effected delivery of the TWCC-52 to the claimant."

The claimant cites Texas Workers' Compensation Commission Appeal No. 972017, decided November 24, 1997, and contends that Appeal No. 972017 required the carrier to send a TWCC-52 to the claimant with its lump sum payment of 8<sup>th</sup> quarter SIBs following its unsuccessful contest of that quarter. We cannot agree that Appeal No. 972017 created that obligation. In this instance, the carrier discharged its obligation to provide the claimant with a TWCC-52 for the 9<sup>th</sup> quarter, when it sent the TWCC-52 to the claimant's then attorney along with its denial of the 8<sup>th</sup> quarter. That action was sufficient to satisfy the requirement of Rule 130.104(b) and we find no merit in the assertion that Appeal No. 972017 created an obligation to send an additional TWCC-52 with the lump sum payment of 8<sup>th</sup> quarter benefits, where, as here, the TWCC-52 had previously been provided. The carrier's obligation to send a TWCC-52 for the 10<sup>th</sup> and 11<sup>th</sup> quarters was not triggered in this case. Under Rule 130.104(b), the carrier is required to send a TWCC-52 for a subsequent quarter with either the first payment for a quarter of SIBs to which the claimant is determined to be entitled or with the carrier's determination of non-entitlement for that quarter. Thus, the claimant would have had to apply for 9<sup>th</sup> quarter SIBs in order for the carrier to be required to send a TWCC-52 for the 10<sup>th</sup> quarter and would have had to apply for the 10<sup>th</sup> quarter to prompt the carrier's obligation to provide the TWCC-52 for the 11<sup>th</sup> quarter.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY 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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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Robert E. Lang  
Appeals Panel  
Manager/Judge

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Robert W. Potts  
Appeals Judge