

APPEAL NO. 031555
FILED JULY 22, 2003

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 May 15, 2003. The hearing officer determined that (1) the respondent (carrier) did not waive its right to dispute compensability of the 16th quarter by failing to specifically state the basis for its denial; and (2) the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 16th quarter. The claimant appeals on legal and sufficiency of the evidence grounds. The carrier urges affirmance.

DECISION

Affirmed.

WAIVER OF RIGHT TO DISPUTE 16TH QUARTER SIBS

The claimant contends that the carrier waived its right to dispute compensability of the 16th quarter by failing to specifically state the basis for its denial, citing Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.104(e) (Rule 130.104(e)). Rule 130.104(e) provides:

Notice of Determination. Upon making subsequent quarter determinations, the carrier shall issue a notice of determination to the injured employee. The notice shall be mailed and shall contain all the information required in the Notice of Entitlement or Non-entitlement portion of the form TWCC-52, Application for [SIBs]. The notice of determination of non-entitlement shall contain sufficient claim specific information to enable the employee to understand the carrier's determination. A generic statement such as "not a good faith effort," "not a direct result," or similar phrases without further explanation does not satisfy the requirements of this section.

The carrier's Notice of Non-entitlement provides, as the basis for its denial, that "[claimant] failed to provide [a] medical report to show that [his] unemployment/underemployment is not [sic] a direct result of [his] impairment and [claimant] failed to make a good faith effort [to] look for work." The hearing officer found that the carrier did not specifically state the reason for its dispute as required by the rule. Notwithstanding, we have held that Rule 130.104(e) does not provide for carrier waiver for failing to give notice in the manner required. See Texas Workers' Compensation Commission Appeal No. 030576, decided April 15, 2003, citing 24 Tex. Reg. 409, January 22, 1999 (wherein the Texas Workers' Compensation Commission discussed adding waiver provision and stated that it was not necessary). Accordingly, we perceive no error.

The claimant also argues that the carrier should be precluded from disputing 16th quarter SIBs, under Rule 130.108(a), because it had approved SIBs in the preceding 15 quarters on similar evidence. Rule 130.108 provides:

Disputes, General. The injured employee, the injured employee's representative, and the insurance carrier shall not pursue a dispute on entitlement or non-entitlement to [SIBs] without a factual or legal basis. Further, the insurance carrier shall not dispute entitlement to a subsequent quarter without considering a comparison of the factual situation of the qualifying period for the previous quarter with the factual situation of the current qualifying period.

Our decision in Texas Workers' Compensation Commission Appeal No. 021366, decided July 1, 2002, is dispositive of this issue. In that case, the claimant contended that the carrier did not make a comparison between the factual situation of the previous qualifying period and the factual situation of the current qualifying period. The Appeals Panel concluded that "any such failure on carrier's part would involve a matter for the Division of Compliance and Practices" and did not amount to reversible error.

ENTITLEMENT TO 16TH QUARTER SIBS

The hearing officer did not err in determining that the claimant is not entitled to 16th quarter SIBs. Section 408.142 and Rule 130.102 establish the requirements for entitlement to SIBs. At issue was whether the claimant had a total inability to work during the qualifying period. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determination is 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 (Tex. 1986).

The true corporate name of the insurance carrier is **FEDERATED MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSS LARSEN
860 AIRPORT FREEWAY WEST, SUITE 500
HURST, TEXAS 75054-3286.**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge