

APPEAL NO. 032333
FILED SEPTEMBER 30, 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 (CCH) was held on June 24, 2003. The hearing officer determined that, because the respondent (carrier) waived its right to dispute the appellant's (claimant) entitlement to supplemental income benefits (SIBs) for the first quarter, the claimant is entitled to SIBs for the first quarter; that the claimant is not entitled to SIBs for the second and third quarters; and that although the carrier waived its right to dispute the claimant's entitlement to SIBs for the first quarter, the carrier did not waive its right to dispute the claimant's entitlement to SIBs for the second and third quarters. The hearing officer's determination on entitlement to SIBs for the first quarter has not been appealed and has become final pursuant to Section 410.169.

The claimant appeals the determinations that the carrier had not waived the right to dispute entitlement to SIBs for the second and third quarters, citing Section 408.147(b) and his interpretation of Texas Workers' Compensation Commission (Commission) rules. The carrier responds, urging affirmance.

DECISION

Affirmed.

The facts on the merits of whether the claimant complied with the eligibility requirements of Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b) (Rule 130.102(b)) are not disputed. As set out by the hearing officer's Statement of the Evidence the carrier failed to properly dispute entitlement to SIBs for the first quarter by not filing a Request for Benefit Review Conference (TWCC-45). The hearing officer commented that "[a]lthough the claimant would not be entitled to SIBs based on his [Application for SIBs] TWCC-52, the carrier has to pay the SIBs anyway because of its oversight." The hearing officer went on to comment;

Commission Rules 130.104(e) and 130.108(e), plus the TWCC-52 form, inform a carrier that the proper procedure to dispute a quarter, when the carrier has not paid SIBs for the previous quarter (the first quarter in this case), is to fill out the top part of the fourth page of the TWCC-52 form, and send it to a claimant as notice of the carrier's determination of non-entitlement to SIBs. Since the carrier had not paid SIBs for the first quarter when it received the second quarter TWCC-52 on December 3, 2002, the Carrier filled out the top of the fourth page of the Claimant's TWCC-52 and sent it to the claimant. Likewise, the Carrier had not paid SIBs for the second quarter when it received the third quarter TWCC-52 on March 10, 2003. So it followed the same procedure.

The claimant contends that Rule 130.108(e) is contrary to Section 408.147(b).

The Appeals Panel has, on several occasions addressed this same situation. In Texas Workers' Compensation Commission Appeal No. 001112, decided June 30, 2000, the hearing officer applied Rule 130.108(e). The claimant argued that the rule was contrary to Section 408.147(b) and the Appeals Panel stated that “[w]e decline to hold a formally promulgated rule of the Commission inconsistent with the 1989 Act and not applicable to the proceedings.” See *also* Texas Workers' Compensation Commission Appeal No. 030555, decided April 18, 2003, and Texas Workers' Compensation Commission Appeal No. 001715, decided September 7, 2000, where the Appeals Panel affirmed the principle at issue. The claimant appeared to recognize this principle and at the CCH stated he just wanted to preserve his position for appeal.

We have reviewed the complained-of determinations and conclude that the hearing officer did not err as a matter of law and that his 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).

We affirm the hearing officer's decision and order.

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

**RICHARD A. MAYER
11910 GREENVILLE AVENUE, SUITE 600
DALLAS, TEXAS 75243-9332.**

Thomas A. Knapp
Appeals Judge

CONCUR

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge