

APPEAL NO. 040141
FILED MARCH 15, 2004

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 scheduled on November 25, 2003. Prior to the beginning of the CCH, the parties agreed to submit their cases on documentary evidence alone and the proceeding was cancelled. The record was closed on November 26, 2003. The hearing officer reviewed the documentary evidence submitted and resolved the disputed issue by deciding that the appellant (self-insured) waived its right to contest the respondent's (claimant) entitlement to supplemental income benefits (SIBs) for the sixth quarter by failing to timely request a benefit review conference (BRC). The self-insured appealed, arguing that the hearing officer erred as a matter of law in finding that the self-insured waived its right to contest the claimant's entitlement to SIBs. The claimant responded, urging affirmance of the disputed determination.

DECISION

Affirmed.

The hearing officer did not err in determining that the self-insured waived its right to contest claimant's entitlement to SIBs for the sixth quarter by failing to timely request a BRC. The self-insured argues on appeal that pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.108(e) (Rule 130.108(e)) it was not required to file a request for a BRC. The claimant argues that at the time the self-insured should have requested a BRC for the sixth quarter, the claimant's entitlement to SIBs for the fourth and fifth quarter was still in dispute. The self-insured argues that the cases cited by the claimant and mentioned by the hearing officer in her Statement of the Evidence (Texas Workers' Compensation Commission Appeal No. 020302 decided March 26, 2002, and Texas Workers' Compensation Commission Appeal No. 021866, decided September 11, 2002) are distinguishable from the instant case. The self-insured contends that the claimant's application for sixth quarter SIBs was received one month after the CCH that determined the claimant was not entitled to SIBs for the fourth and fifth quarters. It is undisputed that the decision of the CCH was appealed. The decision of nonentitlement to SIBs for the fourth and fifth quarters was affirmed by the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 031977, decided September 10, 2003.

As noted in our recent decision in Texas Workers' Compensation Commission Appeal No. 032868-s, decided December 11, 2003, "[t]he 1989 Act and rules contain no specific provisions relating to the factual situation where the immediately preceding quarter is actively under dispute at the time the [self-insured] receives the [Application for Supplemental Income Benefits TWCC-52] for the subsequent quarter." We resolved our previously conflicting decisions by holding that the proper approach when the rule does not fit the factual situation is to return to the statutory provision in the 1989 Act. Section 408.147(b) provides:

- (b) If an insurance carrier fails to make a request for a [BRC] within 10 days after the date of the expiration of the impairment income benefit period or within 10 days after receipt of the employee's [TWCC-52], the insurance carrier waives the right to contest entitlement to [SIBs] and the amount of [SIBs] for that period of [SIBs].

In the instant case, the hearing officer specifically found that the Texas Workers' Compensation Commission did not ultimately decide the claimant's entitlement to SIBs for the preceding quarter until September 10, 2003. There is sufficient evidence in the record to support this finding. Applying Section 408.147, the self-insured was required to request a BRC within 10 days after receipt of the TWCC-52 for the sixth quarter, but did not. The consequence is that the self-insured waived the right to contest entitlement to SIBs for the sixth quarter.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge