

APPEAL NO. 072028  
FILED JANUARY 11, 2008

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 September 26, 2007. The hearing officer resolved the disputed issues by deciding that: (1) the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 11th quarter; (2) the appellant (self-insured) waived the right to dispute the claimant's entitlement to SIBs for the 11th quarter by failing to timely request a benefit review conference (BRC); and (3) the claimant is not entitled to additional reimbursement of travel expenses for medical treatment. The self-insured appealed, disputing the determination of entitlement to 11th quarter SIBs and the determination that the self-insured waived the right to dispute the claimant's entitlement to 11th quarter SIBs. The appeal file does not contain a response from the claimant. The hearing officer's determination that the claimant is not entitled to additional reimbursement of travel expenses for medical treatment was not appealed and has become final pursuant to Section 410.169.

**DECISION**

Affirmed in part and reversed and rendered in part.

**SIBS**

The hearing officer's decision that the claimant is entitled to SIBs for the 11th quarter is supported by sufficient evidence and is affirmed.

**WAIVER**

The hearing officer found that the self-insured received the claimant's Application for [SIBs] (DWC-52) for the 11th quarter on May 31, 2007, and that the self-insured filed a request for a BRC on June 11, 2007. These findings were not appealed. At issue was whether the self-insured waived its right to contest the claimant's entitlement to SIBs for the 11th quarter by failing to timely request a BRC. Section 408.147(b) provides 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 DWC-52, the insurance carrier waives the right to contest entitlement to SIBs and the amount of SIBs for that period of SIBs. *See also*, 28 TEX. ADMIN. CODE § 130.108 (Rule 130.108). The hearing officer determined that the self-insured waived its right to dispute the claimant's entitlement to SIBs for the 11th quarter by failing to timely request a BRC.

On appeal, the self-insured does not disagree that it had to file a request for a BRC in this case to dispute the claimant's entitlement to SIBs for the 11th quarter. However, the self-insured argues on appeal that the hearing officer failed to apply Rule

102.3(a)(3) which would have extended the 10-day deadline and made its BRC request timely. Rule 102.3(a)(3) provides, in part, that due dates and time periods under this Act shall be computed as follows:

(3) unless otherwise specified, if the last day of any period is not a working day, the period is extended to include the next day that is a working day.

Rule 102.3(b) provides that a working day is any day, Monday-Friday, other than a national holiday as defined by the Texas Government Code, Section 662.003(a) and the Friday after Thanksgiving Day, December 24th and December 26th. Use in this title of the term "day," rather than "working day" shall mean a calendar day.

In this case, the 10th day after the self-insured's receipt of the claimant's 11th quarter DWC-52, was June 10, 2007, a Sunday, and the date for requesting a BRC to dispute the claimant's entitlement to 11th quarter SIBs with the Texas Department of Insurance, Division of Workers' Compensation was thus, in accordance with Rules 102.3(a)(3) and (b), on Monday, June 11, 2007. Appeals Panel Decision 041358, decided July 27, 2004. The hearing officer's calculation of the 10-day deadline was incorrect. Therefore, we reverse the hearing officer's determination that the self-insured waived the right to contest the claimant's entitlement to SIBs for the 11th quarter by failing to timely request a BRC, and render a new decision that the self-insured did not waive the right to contest the claimant's entitlement to SIBs for the 11th quarter because it timely filed a request for a BRC.

### **SUMMARY**

The hearing officer's decision that the claimant is entitled to SIBs for the 11th quarter is affirmed. The hearing officer's decision that the self-insured waived the right to contest the claimant's entitlement to SIBs for the 11th quarter is reversed and a new decision is rendered that the self-insured did not waive the right to contest the claimant's entitlement to SIBs for the 11th quarter.

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:

**JONATHAN BOW, 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:

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

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge