

APPEAL NO. 090083
FILED MARCH 17, 2009

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 December 2, 2008. The hearing officer resolved the disputed issues by deciding that the Texas Department of Insurance, Division of Workers' Compensation (Division) does not have jurisdiction to adjudicate the issues of impairment rating (IR) and entitlement to supplemental income benefits (SIBs) for the 11th, 12th, and 13th quarters and that because the Division does not have jurisdiction, the Division cannot determine the IR or entitlement to SIBs for the 11th, 12th, and 13th quarters. The appellant (claimant) appealed, disputing the determination regarding jurisdiction of entitlement to the SIBs quarters in dispute and contending that the claimant's IR remains 20% and is binding on the parties due to the pending appeal in the Third Court of Appeals. The respondent (carrier) responded, urging affirmance of the hearing officer's determination.

DECISION

Affirmed in part, reversed and rendered in part, and reversed and remanded in part.

It was undisputed that at a prior CCH held on August 24, 2005, the same hearing officer determined that the claimant's IR was 20%. The carrier timely appealed the hearing officer's IR decision to the Appeals Panel. A written decision by the Appeals Panel on the carrier's appeal was not issued by the 45th day after the response was due or filed with the Division; therefore, the hearing officer's decision that the claimant's IR was 20% became final and is the final decision of the Appeals Panel pursuant to Section 410.204(c). The Appeals Panel decision was then appealed to district court. In evidence is a district court final judgment filed June 6, 2008, in which it was ordered, adjudged, and decreed by the court that the 20% IR is invalid as being improperly based on invalid and withdrawn Division Advisories 2003-10 and 2003-10B and that the court has no competent evidence from a doctor giving rise to a valid IR. It was undisputed that the IR issue was then appealed to the Third Court of Appeals where it is pending.

JURISDICTION TO DETERMINE THE IR

That portion of the hearing officer's determination that the Division does not have jurisdiction to adjudicate the issue of IR is supported by sufficient evidence and is affirmed.

JURISDICTION TO DETERMINE ENTITLEMENT TO SIBS FOR THE 11TH, 12TH, AND 13TH QUARTERS

Section 410.205(b) provides that the decision of the Appeals Panel regarding benefits is binding during the pendency of an appeal under Subchapter F or G (relating to Judicial Review). In Lopez v. Texas Workers' Comp. Ins. Fund, 11 S.W.3d 490 (Tex. App.—Austin 2000, pet. denied), the court held that Section 410.205(b) clearly provides that the ultimate administrative ruling—whether granting or denying benefits—remains in effect until overturned by a final and enforceable judicial decision. The claimant in Lopez, argued that the decision of the Appeals Panel denying benefits remains in effect only until the district court renders a decision, but that the trial court's decision awarding benefits then becomes effective without regard to further appellate review. The court disagreed noting that the text of the Labor Code did not support the claimant's interpretation. The court noted that the claimant would have the district court's decision enforced even though it is not yet final and still on appeal, and that nowhere does the statute expressly provide for such an outcome. The court in Lopez, stated “[w]e believe the statute as written reflects the State's policy that benefits should be payable or not in accordance with the [A]ppeals [P]anel's decision until a final judicial decision rules otherwise.” Section 410.207 provides that during judicial review of the Appeals Panel decision on any disputed issue relating to a workers' compensation claim, the Division retains jurisdiction of all other issues related to the claim. See Appeals Panel Decision (APD) 080713, decided July 17, 2008.

The hearing officer erred in deciding that the Division does not have jurisdiction to adjudicate the issues of entitlement to SIBs for the 11th, 12th, and 13th quarters. Although having an IR of 15% or more from the compensable injury is one of the threshold requirements for entitlement to SIBs, the 20% IR as determined by the Division is binding during the pendency of an appeal and the Division retains jurisdiction to determine entitlement to SIBs for the quarters in dispute. We reverse the hearing officer's jurisdiction determination regarding entitlement to the SIBs quarters in dispute and we render a new decision that the Division has jurisdiction to determine entitlement to SIBs for the 11th, 12th, and 13th quarters.

SIBS ENTITLEMENT FOR THE 11TH, 12TH, AND 13TH QUARTERS

Because of his resolution of the jurisdiction issue, the hearing officer did not make findings of fact, conclusions of law, or a decision on the merits of the issues of entitlement to SIBs for the 11th, 12th, and 13th quarters. Whether the claimant met the good faith criterion for SIBs entitlement was a fact question for the hearing officer to resolve from the conflicting evidence presented at the CCH. We remand this case to the hearing officer to make a determination on the issues of SIBs entitlement for the 11th, 12th, and 13th quarters.

SUMMARY

We affirm that portion of the hearing officer's determination that the Division does not have jurisdiction to adjudicate the issue of IR. We reverse that portion of the hearing officer's determination that the Division does not have jurisdiction to adjudicate the issues of SIBs entitlement for the 11th, 12th, and 13th quarters and render a new determination that the Division does have jurisdiction to adjudicate the issues of SIBs entitlement for the 11th, 12th, and 13th quarters. We remand this case to the hearing officer to make a determination on the issues of entitlement to SIBs for the 11th, 12th, and 13th quarters.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge