

APPEAL NO. 972512

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 November 3, 1997. The issues at the CCH were entitlement to supplemental income benefits (SIBS) for the 10th, 11th and 12th compensable quarters and whether the appellant (self-insured) waived its right to contest SIBS for the 11th and 12th quarters. The hearing officer determined that the respondent (claimant) was not entitled to SIBS for the quarters in issue but that the self-insured waived its right to contest SIBS for the 12th quarter as it did not dispute entitlement in a timely manner. The only issue on appeal by the self-insured is the conclusion that it did not dispute the 12th quarter in a timely manner and that the claimant was thereby entitled to SIBS for the 12th quarter. No appeal or response has been filed by the claimant.

DECISION

Affirmed.

Concerning the single matter on appeal involving 12th quarter SIBS, the evidence showed that the claimant signed and sent a Statement of Employment Status (TWCC-52) for 12th quarter SIBS dated May 6, 1997, and stamped received by the self-insured's agent on May 9, 1997. Also in evidence was A Request for Setting A Benefit Review Conference (TWCC-45) dated May 13, 1997, and date stamped received by the Texas Workers' Compensation Commission's (Commission) central office in Austin, Texas, on May 13, 1997. The request checked the box for contesting the entitlement to or amount of SIBS, set out that the request was by the self-insured and provided the name, address and phone number of the requester, but was not signed by anyone. Immediately above the signature block was the statement: "[b]y my signature below, I certify that a good faith effort has been made to resolve the issues identified above." Also in evidence was a letter from the Commission dated June 6, 1997, to the requester indicating the request was denied, that a benefit review conference (BRC) would not be set because: "no information to show that the requesting party has made a good faith attempt to resolve the benefit dispute" and "TWCC 45 was not signed by the requester. It's not a valid request." The Commission's letter goes on to advise: "Once additional documentation is obtained, you may submit a new request for informal dispute resolution." A date stamp shows that this Commission letter was received on June 6, 1997, by the self-insured's representative. A duplicate copy of the request for a BRC was sent and received by the Commission on June 10, 1997, with the signature of the requester for the self-insured.

The hearing officer determined that the first request was not valid without a signature, that the second copy of the request dated June 10, 1997, was not filed within 10 days of the self-insured's receipt of the TWCC-52, and therefore the self-insured did not timely dispute and was liable for 12th quarter SIBS. Self-insured asserts that a Question/

Resolution Log (97-94) urged by the claimant was not controlling on the issue, that such did not set a requirement apart from the statute and rules, that the self-insured complied with the requirements for requesting a BRC even though a signature was omitted on the first request, and that there is no authority to apply waiver under these conditions. We do not find merit to the positions advanced by the self-insured to the narrow issue presented.

Initially, we note that the 1989 Act provides in Section 408.147, that a carrier "may request" a BRC to contest an employee's entitlement to SIBS and waives the right to contest if it "fails to make a request for a benefit review conference within 10 days" after receipt of the employee's statement. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.108(c) (Rule 130.108(c)), in implementing this provision, echos the provision that a carrier waives the right to contest if it "fails to request a benefits review conference within 10 days. . . ." The rules providing for requesting a BRC are contained in Rule 141.1(b) and, pertaining to a carrier, state that the request shall:

- 1) be made on form TWCC-45, Request for Setting a Benefit Review Conference;
- 2) identify and describe the disputed issue or issues; and
- 3) be sent to the commission.

Rule 141.1, adopted by the Commission, specifically incorporates into the requirements and provides that the request be made on a TWCC-45. The TWCC-45, including the form (Interim TWCC-45 (1/91)) in existence at the time of the effective date of the Rule (June 7, 1991), provides for a signature which, by its very terms, specifies that "by my signature" the party is certifying to certain matters. We note that BLACK'S LAW DICTIONARY (6th ed. 1990), in defining certificate and certification states, in part: AA statement of some fact in writing signed by the party certifying." See *generally*, Texas Workers' Compensation Commission Appeal No. 951326, decided September 25, 1995, and Texas Workers' Compensation Commission Appeal No. 92027, decided March 27, 1992, and cases involving certification in medical report.

It is not necessary to reach the matter of whether the Question/Resolution Log was "controlling" as we conclude the hearing officer was correct in his determination that the initial May 13, 1997, TWCC-45 was not valid without the signature under the certification statement, and hence was not timely filed within the 10-day limit. While it can be questioned why the Commission's letter to the self-insured was not sent until some 20 days after the receipt of the unsigned May 13, 1997, TWCC-45, no authority is cited and we are not aware of any that would hold that an invalid request would nonetheless toll the running of the 10-day period mandated by statute and by rule.

We hold that the initial request for a BRC was not valid under the requirements of the 1989 Act and Rules, and, consequently, the request for a BRC was not timely. The decision that the self-insured did not timely dispute the 12th quarter of SIBS and that the claimant is entitled to SIBS for the 12th quarter is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge