

APPEAL NO. 220504  
FILED MAY 20, 2022

This appeal arises pursuant to the Texas Workers' Compensation Act, Tex. Lab. Code Ann. § 401.001 *et seq.* (1989 Act). An expedited contested case hearing (CCH) was held on February 9, 2022, with the record closing on February 23, 2022, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the Request to Schedule, Reschedule, or Cancel a Benefit Review Conference (BRC) (DWC-45) received on December 17, 2021, met the requirements of 28 Tex. Admin. Code § 141.1(d) (Rule 141.1(d)) for the purpose of scheduling a BRC.

The appellant (claimant) appealed, disputing the ALJ's determination. The appeal file did not contain a response from the respondent (self-insured) to the claimant's appeal.

DECISION

Reversed and remanded.

The issue as certified by the ALJ in the CCH was as follows: "Did the [DWC-45] received on December 17, 2021, meet the requirements of Rule 141.1(d) for the purpose of scheduling a BRC and, if not, does good cause exist for failing to meet the requirements?"

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury. The evidence indicates that the claimant filed an application for sixth quarter supplemental income benefits (SIBs) with the self-insured on December 10, 2021. On December 17, 2021, the self-insured filed a DWC-45 with the Texas Department of Insurance, Division of Workers' Compensation (Division) to dispute the claimant's entitlement to sixth quarter SIBs. The claimant filed a request for an expedited CCH, arguing that the self-insured's DWC-45 did not meet the requirements of Rule 141.1(d) because the self-insured failed to document efforts to resolve the disputed issue.

Rule 141.1, effective December 9, 2021, provides in part:

(d) Request for [BRC]. A request for a [BRC] must be made in the form and manner required by the [D]ivision. The request must:

(1) identify and describe the disputed issues;

(2) provide details and supporting documentation of efforts made by the requesting party to resolve the disputed issues, including, but not limited to, copies of the notification provided in accordance with subsection (a) of this section, correspondence, emails, faxes, records of telephone contacts, or summaries of meetings or telephone conversations . . . ;

(3) contain the requesting party's signature to show that the party made reasonable efforts to resolve the disputed issues before requesting a [BRC], and provide any pertinent information in their possession to the other parties as required by [Rule] 141.4(c) of this title; and

(4) send the request to the [D]ivision and opposing parties.

(e) Complete Request. A request that meets the requirements of subsection (d) of this section is a complete request for a [BRC]. The [D]ivision will schedule a [BRC] if the request is complete and otherwise appropriate for a [BRC].

(f) Incomplete Request. A request for a [BRC] that does not meet the requirements of subsection (d) of this section is an incomplete request. The [D]ivision will deny an incomplete request.

(1) A denied request for a [BRC] does not constitute a dispute proceeding, except as provided by subsection (g) of this section.

(2) If the [D]ivision denies a request, it will provide notice to the parties and state the reasons for the denial.

(3) On notice from the [D]ivision, the requesting party may submit a new request for a [BRC] that meets the requirements of this section.

(g) Incomplete Request Denials. If a party disagrees with the [D]ivision's determination that the request was incomplete, or if a party has good cause for failing to meet the requirements of subsection (d) of this section, the party may pursue an administrative appeal of the [D]ivision's determination under Chapter 142 of this title (relating to Dispute Resolution—[CCH]). The party may also request an expedited [CCH] under [Rule] 140.3 of this title (relating to Expedited Proceedings).

In the present case, the evidence indicates that the self-insured's adjuster sent an email to the claimant's attorney on December 17, 2021, stating to "[p]lease see attached." The attachments included a Notice of Entitlement or Non-entitlement dated

December 15, 2021, that indicated that the claimant was not entitled to sixth quarter SIBs because she failed to attach job applications for her work searches. Also included as an attachment was the self-insured's December 17, 2021, DWC-45. In Box 19 of the DWC-45, it asks the requestor to describe what has been done to resolve the disputed issue. The adjuster only indicated, "as per Section 408.147(a), [the] [self-insured] is requesting a BRC." In Finding of Fact No. 5, the ALJ found that the DWC-45 on December 17, 2021, was made in the form and manner required by Division rules. We disagree. In Appeals Panel Decision (APD) 111238, decided September 28, 2011, the carrier filed a DWC-45 disputing SIBs entitlement and sent the DWC-45 as well as a PLN-11 explaining the reasons for denial of entitlement to the claimant on the same day. In that case, the Division found the DWC-45 to be incomplete due to a failure to specify the efforts to resolve the dispute prior to filing the DWC-45. The Appeals Panel noted that Rule 141.1 and the preamble to Rule 141.1 (35 Tex. Reg. 7430, 2010) make clear that all the requirements of Rule 141.1(d) must be met and if the requirements of subsection (d) are not met, the request is an incomplete request which will be denied. The Appeals Panel rendered a decision that the carrier, having failed to file a complete and timely request for a BRC, had also failed to timely dispute entitlement to SIBs for the quarter in dispute pursuant to Rule 130.108(c).

Similarly in the present case, although the DWC-45 and Notice of Entitlement or Non-entitlement were emailed to the claimant's attorney, there was no evidence of any attempt by the self-insured to resolve the dispute prior to filing. Accordingly, we reverse the ALJ's determination that the DWC-45 received on December 17, 2021, met the requirements of Rule 141.1(d) for the purpose of scheduling a BRC.

As stated above, the issue before the ALJ includes a question of whether good cause exists for the December 17, 2021, DWC-45 failing to meet the requirements of Rule 141.1(d). In this case, the ALJ did not make a finding of fact regarding whether there was good cause for failing to meet the requirements of Rule 141.1(d). We note that the deadline for the self-insured to request a BRC was December 20, 2021. Therefore, we remand the issue of whether the self-insured had good cause for failing to meet the requirements of Rule 141.1(d).

### **REMAND INSTRUCTIONS**

On remand the ALJ should analyze the evidence and make a finding and determination regarding whether the self-insured had good cause for failing to meet the requirements of Rule 141.1(d).

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 ALJ, 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 **TEXAS DEPARTMENT OF TRANSPORTATION (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**(NAME)**  
**EXECUTIVE DIRECTOR**  
**125 E. 11TH STREET**  
**AUSTIN, TEXAS 78701.**

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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge