

ADVISORY NO. 35

TOPIC: TIMELINESS OF TEMPORARY INCOME BENEFIT PAYMENTS

There has been a great deal of concern about what kind of notification triggers our duty to begin the payment of temporary income benefits and subjects us to an administrative violation under Article 8308, Section 5.21.

The Commission has addressed this concern in Rule 124.7, which was promulgated after the F, O & L Rule Book was published. Rule 124.7(c) provides as follows:

"A carrier has complied with the requirement to timely initiate temporary income benefits as required by the Texas Workers' Compensation Act, Sec. 5.21, if the first payment of benefits is made no later than the seventh day after receiving written notice of injury stating that the employee has suffered eight days of disability."

Applying this rule, a written notice of injury that fails to indicate that the employee has actually suffered eight days of disability does not trigger a duty to begin the payment of temporary income benefits. Written notification of a no lost time injury followed by a subsequent verbal notice does not trigger the duty. The writings must both demonstrate a written notice of injury and must demonstrate that the employee has, to that date, suffered eight days of disability.

This rule is little known and has been rarely applied. It will gain a great deal of attention as Compliance and Practices becomes more active.

The question that necessarily follows is whether our sixty day refusal window under Sec. 5.21(a) first attaches to any written notice of injury or whether it attaches to a written notice complying with Rule 124.7. We are in the process of obtaining clarification from the Division of Compliance and Practices. We contend that a Rule 124.7 written notification is necessary for this sixty day deadline to begin running.

FLAHIVE, OGDEN & LATSON