

## ADVISORY NO. 75

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### TOPIC: SUPPLEMENTAL INCOME BENEFITS (SIBs)

For the past two years, we have all been consumed with understanding and implementing the statute, rules and Appeals Panel Opinions with regard to temporary and impairment income benefits. While that process will continue for some time to come, we are now beginning to encounter claims involving supplemental income benefits. Please be aware that the procedures outlined by the statute and rules relating to SIBs are complex, contain crucial deadlines, and impose significant duties on the carrier, as well as the Texas Workers' Compensation Commission and claimant. Each adjuster handling lost time claims must thoroughly read and understand Article 8308-4.28, FO&L's editorial notes following the statute, TWCC Rule 130.10 and TWCC Rules 130.101-130.110 in order to avoid administrative violations and waiver of disputes.

**SUMMARY OF SIBs** -- An employee who has an impairment rating of not less than fifteen percent, and who has not chosen to commute impairment income benefits (IIBs), is entitled to SIBs if he/she has made a good faith attempt to work commensurate with medical restrictions and has not returned to work, or is earning less than eighty percent of his pre-injury average weekly wage as a direct result of the impairment. SIBs accrue on *the day following* the expiration of the IIBs period. Benefits are due *by the seventh day following* the expiration of the IIBs period. The Texas Workers' Compensation Commission will mail the initial TWCC Form-52 to the claimant at the end of the IIBs period. Benefits are calculated quarterly and paid on a monthly basis in advance. Calculation of SIBs is outlined in TWCC Rule 130.102(d). The maximum SIBs rate is identical to the maximum IIBs rate. SIBs payments can stop and start, as well as potentially vary in amount from quarter to quarter, depending upon the claimant's employment status, medical status and the filing of required documents by the claimant. The TWCC will review each SIBs claim at least annually. Entitlement ends when the claimant has not been receiving SIBs for twelve months, except for certain employer termination situations. Income benefit payments, including SIBs, always terminate at 401 weeks from the date of injury (except for lifetime benefit and certain death benefit cases). If a carrier loses a SIBs dispute and the claimant is represented by an attorney, the carrier must pay all accrued benefits to the claimant and an additional reasonable and necessary attorney fee to the claimant's attorney.

**INITIAL SIBs DEADLINES** -- Rule 130.108(b) -- Unlike TIB and IIBs disputes that are raised by the filing of the TWCC-21 and TWCC-69, ***SIBs disputes must be raised by the timely filing of the TWCC-45, the Benefit Review Conference request.*** In order to dispute the initial quarterly determination that a claimant is entitled to SIBs or the SIBs rate, the carrier must file the TWCC-45 with the appropriate Texas Workers' Compensation Commission field office ***within TEN days of the (1) expiration of the IIBs period or (2) carrier's receipt of TWCC determination on Interim Form-52.*** (This is a combined interim form that includes the Statement of Employment Status as well as the Notice of Approval or Disapproval. The Commission is expected to produce a final form in March of 1993 which will include filing instructions and a description of the consequences of late filing or failure to file on the backside of the form.) The claimant fills out the top of the form and submits it to the Commission, who then makes the initial determination (approval or disapproval) of the benefits. After the Commission's approval of the benefits, the ***carrier*** subsequently performs quarterly determinations

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and calculations by completing the lower portion of the form. ***Thereafter, the carrier must mail the subsequent TWCC Form-52 to the claimant with the third monthly check of each quarter.***

***SUBSEQUENT SIBs DEADLINES*** -- Rule 130.108(c) -- In order for the carrier to dispute SIBs entitlement or the SIBs rate in ***subsequent*** quarters, the TWCC-45 must be filed with the appropriate Texas Workers' Compensation Commission field office within ten days of the carrier's receipt of the claimant's subsequently completed TWCC Form-52. When the carrier receives a subsequently filed TWCC Form-52 from the claimant, it must complete the Notice of Approval or Disapproval within ten days of receipt and forward the completed form to the Texas Workers' Compensation Commission and claimant. Similar deadlines and requirements are contained in TWCC Rule 130.105 with regard to delayed or reinstated SIBs.

If the carrier fails to timely file the TWCC-45 Benefit Review Conference request raising a SIBs dispute, it waives the right to dispute SIBs for the involved quarter (***13 weeks of benefits!***).

ATTACHMENT - TWCC (DRAFT) FORM-52