

ADVISORY NO. 145

TOPIC: PAYMENT OF IMPAIRMENT INCOME BENEFITS WITHOUT SEVEN DAYS OF DISABILITY

Section 408.082(a) of the Texas Labor Code states: "Income benefits may not be paid under this subtitle for an injury that does not result in disability for at least one week." This section would seem to preclude any impairment income benefits if the claimant has less than seven full days of disability.

However, in Appeal No. 94841, the Appeals Panel held that Rule 130.8 requires payment of impairment income benefits even where there has not been seven full days of disability. We believe that the Appeals Panel is incorrect. This case is being appealed to the courthouse. In the meantime, this new Appeal Panel decision is binding upon us.

You will need to review your files to determine if you have denied any IIBS on this basis. The Appeals Panel is clear that this is not a valid basis for refusing to pay. If you have, you will have to decide whether you want to continue to deny on this basis. At this point, you will not prevail at the Commission level, and you will have to take the case to court. If you choose to follow this course, then you need to request a BRC. If, however, you decide that you do not want to pursue this to the courthouse, we recommend that you calculate the amount owed, and pay this as soon as possible.