

ADVISORY NO. 210

TOPIC: FILING DISPUTES AND REQUESTS FOR BRC

A Panel of the Texas Workers' Compensation Commission Appeal's Panel has held that a carrier waived its right to contest the claimant's continuing entitlement to SIBs by not filing its Request for Setting BRC (TWCC 45) *in the field office managing the claimant's claim* within 10 days of its receipt of the claimant's TWCC 52.

In Texas Workers' Compensation Commission Appeal No. 962426, the Panel noted that TWCC 52's seeking continuing entitlement to SIBs must be contested by the carrier by filing a BRC request in the manner outlined in TWCC Rule 141.1. This Rule provides that a Request for BRC "shall be sent to the Commission."

Relying upon Rule 102.5(g), the Panel held that the request was to be "directed to the local commission field office managing the claim." Rule 102.5(g) states:

Unless otherwise specified by rule, forms notices, and other written communications required to be filed with the commission shall be directed to the local commission field office managing the claim.

The decision, by its terms, deals with a BRC request that is filed in the wrong field office. Some claimants may, however, argue that it is applicable to TWCC 45 filings made in the Austin Central Office.

Pending clarification of this issue, we advise that TWCC 45 filings be made in the Central Office, by hand delivery in our office, as well as by certified mail to the "Field Office Managing the Claim". Please remember that the mailbox rule does not apply to TWCC 45 filings. This means that the Request for BRC must be *received* by the field office on or before the tenth day, not simply mailed.

This holding may also affect the filing of disputes, such as over the issue of compensability (by TWCC-21) or change of doctor (by TWCC-45).

The Commission has repeatedly recognized a Carrier's right to request a BRC by filing the request in the Central Office as another Commission Rule expressly permits. Texas Workers' Compensation Commission Rule 102.7 clearly appears to permit such filings in the Central Office. Rule 102.7 provides:

Timely Filing

FLAHIVE, OGDEN & LATSON

Unless otherwise specified in the Act or these rules, forms, reports, and other documents required to be filed by a specified time will be considered timely only if *received by the commission at Austin, or at an appropriate regional field office*, prior to or during business hours on the last permissible day of filing.

It is very helpful for you to include the alphabetical designation for the field office handling the claim on all TWCC-45s and TWCC-21s that we file. Please place this two-letter designation on the form near the TWCC Number.

We will continue to monitor this issue. However, you should be aware of Texas Workers' Compensation Commission Appeal No. 962426 and evaluate it's impact upon your claims handling procedures.