

ADVISORY NO. 364
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TOPIC: ALL SIBS DISPUTES MUST BE FILED ON TWCC-45 FORM

In a radical departure from prior Commission policy, the Appeals Panel announced a new rule for dealing with disputes of Supplemental Income Benefits. In Texas Workers' Compensation Commission Appeal No. 032868-s, decided December 11, 2003, the Appeals Panel stated:

To be clear, we hold that when the issue of entitlement to the prior quarter of SIBs is ongoing and the claimant submits a TWCC-52 for the subsequent quarter, the carrier must timely request a BRC if it wishes to dispute the subsequent quarter, and a failure to do so results in waiver as provided in Section 408.147(b).

The carrier in Appeal No. 032868 did not request a BRC for the fourth quarter, as it had previously disputed the third quarter. Further, in a prior decision, the carrier was found not liable for the third quarter. However, as the third quarter had not been resolved as of the date of the carrier's receipt of the claimant's application for the fourth quarter, the Appeal Panel held that the carrier was required to file a request for a BRC in order to prevent waiver.

As it is highly unlikely that any quarter will be finally resolved as of the date of receipt of the SIBs application for the subsequent quarter, for all practical purposes, this means that a TWCC-45 needs to be filed with *every* SIBs dispute.

Although this holding seems to be inconsistent with the relevant SIBs rules, The Appeals Panel held that the relevant rules were actually silent on this point. Nevertheless, it was acknowledged by Appeals Panel to be inconsistent with prior Appeals Panel Decisions. It is also completely inconsistent with Commission Advisory 99-02, which had stated:

There is no requirement in new rules 130.100 - 130.108 for the insurance carrier to file a copy of Form TWCC-52 with the Commission after a determination of entitlement or non-entitlement is made. The carrier must file Form TWCC-45, *Request for a Benefit Review Conference*, if it disagrees with the Commission's determination for the first quarter or when it makes a finding of non-entitlement for a subsequent quarter and has previously been paying SIBs. The carrier is not required to request a benefit review conference if it finds non-entitlement and did not pay SIBs in the quarter that immediately preceded the quarter for which Form

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TWCC-52 was filed.

We will advise you should the Commission issue a clarifying Advisory. In the meantime, we reiterate our July 2002 advice in FOL Advisory 334 that a carrier should file a TWCC-45 at the time of its dispute of SIBs, regardless of whether the prior quarter had been paid.