

APPEAL NO. 93642

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). At the contested case hearing held in (city), Texas, on July 12, 1993, the parties announced their agreement with the hearing officer that the sole disputed issue before the hearing officer, (hearing officer), was whether the appellant (claimant) was entitled to interest on temporary income benefits (TIBS) which accrued between January 2, 1992, and January 21, 1993, and which were paid by the respondent (carrier) pursuant to a Benefit Review Conference (BRC) agreement made on April 2, 1993. The carrier contended that since the income benefits were paid pursuant to the BRC agreement and not an order of the Texas Workers' Compensation Commission (Commission), claimant was not entitled to interest, citing Section 408.064(a) (1989 Act). The hearing officer concluded that the carrier is not required to pay claimant interest on the accrued and unpaid benefits which were found to have been paid pursuant to a BRC agreement. In his request for review, claimant asserts error in the hearing officer's decision for the reasons that the decision results in the unjust enrichment of the carrier and will discourage use of the BRC agreement mechanism. Claimant further asserts that even if the 1989 Act does not provide for the payment of interest in this case, authority for the payment of interest can be found in another Texas statute. The carrier's response meets each of claimant's assertions and urges our affirmance.

DECISION

Finding the evidence sufficient to support the decision, we affirm.

Claimant, the sole witness, testified that he was injured on (date of injury), while employed by (employer) of (city), Texas. He said he had back surgery on January 13, 1992, and a second operation on May 12, 1993. He said that at the first BRC when the agreement was entered into, he was represented by an attorney, the matter of the TIBS which had accrued since January 2, 1992, was discussed, that such TIBS were calculated to have been in the amount of \$23,652.00, and that there was no mention of the payment of interest by carrier on those TIBS. Claimant also stated he has not yet received any such interest.

The BRC agreement was dated January 7, 1993, and reflected that a BRC was held on that date and that claimant was represented by the attorney who represented him at the contested case hearing. No report of the January 7th BRC was in evidence. The agreement framed the "disputed issue" thusly: "If [claimant] sustain (sic) a compensable injury on 9-5-91. If [claimant] is entitled to State Workers Compensation." The agreement stated the "Resolution" of the disputed issue as follows: "Parties agree [carrier] will accept liability of this claim. Parties also agree [claimant] is entitled to State Workers Compensation. Benefits will begin as of 1-2-92." The agreement form stated that all agreements are subject to the pertinent provisions of "Art. 8308-6.15(a),(b),(c)" (now Sections 410.029 and 410.030, 1989 Act), and it was signed on January 7, 1993, by the claimant, his attorney, the carrier's representative, and the benefit review officer

(BRO).

In his request for review, claimant states that the January 7th BRC was held to consider issues concerning claimant's entitlement to accrued income benefits and payment of his medical expenses, that agreement was reached that carrier would pay claimant's medical expenses and past due accrued income benefits for the period from January 2, 1992, through January 13, 1993, that such payment was made on January 21, 1993, and that "[a]fter discovering that [carrier] had not and would not voluntarily pay interest on the past due accrued income benefits, [claimant] requested a second [BRC] for the purpose of determining if the carrier owes interest" to claimant and, if so, the amount.

We cannot ascertain from the record whether the BRC "agreement" was tantamount to a "settlement," nor does the claimant assert any deficiencies with the BRC agreement as such. The opinion in Texas Workers' Compensation Commission Appeal No. 93259, decided May 17, 1993, observed that the definition of "agreement" in the 1989 Act specifically excludes a "settlement" which is separately defined (see Sections 401.011(3) and (4)) and that Section 408.005 "provides for certain restrictions on settlements including limiting lump sum payments, prohibiting the limiting or termination of medical benefits, and precluding the resolution of impairment rating issues prior to the reaching of MMI [maximum medical improvement]." The opinion further noted that a settlement must be approved by the Commission's hearings division director who can do so only if the settlement accurately reflects the terms of the parties' agreement, reflects adherence to all appropriate provisions of law and the Commission's policies, and is in the best interest of the claimant under the law and the facts.

The hearing officer introduced a report of the BRC held on April 2, 1993, which stated that the issue raised but unresolved at that conference was whether claimant was due interest on accrued TIBS for the period "1/2/92 thru 1/21/93." Claimant's position was that he was due \$507.73 in interest for the "1/2/92 thru 1/21/93" period, that he never received "Longshore Harborworkers benefits," and that the Commission should order the payment of interest since the carrier had the use of the money he was due in TIBS. The carrier's position was that no interest was due because the TIBS were paid pursuant to the parties' BRC agreement rather than a Commission order. The carrier also maintained that claimant had pursued a "Longshore Harborworkers claim" until 11/92."

Finding that after an initial denial of liability for claimant's (date of injury), back injury the parties entered into a BRC agreement for the payment of workers' compensation benefits by the carrier, and further finding that the Commission had not entered an order for the payment of such benefits, the hearing officer concluded that carrier was not required to pay interest on the TIBS which had accrued and were later paid by the carrier pursuant to the parties' agreement. In her discussion the hearing

officer stated that while the failure to award interest would result in an unjust enrichment of the carrier, the plain language of the 1989 Act provides for the payment of interest only when the benefits are paid pursuant to a Commission order and that for this reason alone the decision for the carrier was made.

Section 408.081(b) (1989 Act) provides that "[e]xcept as otherwise provided by this subtitle, income benefits shall be paid weekly as and when they accrue without order from the Commission." Section 408.064(a) (1989 Act) provides that "[a]n order to pay income or death benefits accrued but unpaid must include interest on the amount of compensation due at the rate provided by Section 401.023. (Emphasis supplied.)" Section 401.023 provides a formula for the computation of the interest or discount rate. Claimant disputes the carrier's view of Section 408.064(a) as controlling for the reason that no Commission order to pay benefits was involved. However, claimant points us to no provision in the 1989 Act which authorizes the Commission to order the payment of interest on past due income benefits resulting from a BRC agreement of the parties which was silent concerning interest. Interest is defined as "the compensation allowed by law for the use or forbearance or detention of money; . . ." TEX. REV. CIV. STAT. ANN. art. 5069-1.01(a). Claimant asserts that policy reasons such as the unjust enrichment of the carrier and the potential discouragement of parties from using the BRC agreement mechanism should be considered. Claimant further contends that even if the 1989 Act does not provide for the payment of interest on the accrued, unpaid TIBS agreed to by the parties in this case, TEX. REV. CIV. STAT. ANN. art. 5069-1.03 provides for the payment of interest at six percent per annum. This statute provides:

When no specified rate of interest is agreed upon by the parties, interest at the rate of six percent per annum shall be allowed on all accounts and contracts ascertaining the sum payable, commencing on the thirtieth (30th) day from and after the time when the sum is due and payable.

This statute plainly has application to accounts and contracts and claimant has cited no authority applying it to BRC agreements providing for the payment of workers' compensation income benefits. The enactment of the 1989 Act resulted in the repeal of TEX. REV. CIV. STAT. ANN. art. 8306a which provided for both a four percent discount of the lump sum present payment of future weekly workers' compensation pursuant to an agreement of the parties, an order of the former Industrial Accident Board, or the judgement of a court, and for the recovery of four percent interest on past due installments by suit.¹ In a case involving the application of that statute, the Supreme Court of Texas stated: "Although the liability of a workmen's compensation insurance carrier is contractual in nature the contract is not one `ascertaining the sum payable'

¹ See Section 401.023 for interest or discount rate.

within the meaning of Article 5069-1.03. In our opinion, the provisions of Article 8306a concerning the recovery of interest on past due installments remain in full force and effect and are controlling here." Home Indemnity Company v. Mosqueda, 473 S.W.2d 456, 460 (Tex. 1971). We view this case as holding that, aside from the interest rate on court judgements for payment of workers' compensation benefits, Article 5069-1.03 does not apply to such benefits.

Claimant further urges that the Commission's failure to order the payment of interest in this case would not only result in the unjust enrichment of the carrier but would also penalize claimant who availed himself of the BRC agreement mechanism, whereas had he obtained benefits pursuant to a Commission order payment of interest would have been mandated by Section 408.064(a). "Generally the powers of an administrative agency are derived entirely from legislative enactment. The agency has only such powers as are expressly conferred on it by statute together with those necessarily implied from powers and duties expressly given or imposed." 2 Tex. Jur. 3d *Administrative Law* § 11 (1979). In the absence of explicit authority in the 1989 Act or the Commission's rules, the Appeals Panel will refrain from ordering the payment of interest under the particular circumstances of this case where the parties themselves did not provide for the payment of interest as a term of their agreement.

The hearing officer's findings and conclusions being sufficiently supported by the evidence and the record being free of reversible error, we affirm the decision of the hearing officer.

Philip F. O'Neill
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge