

APPEAL NO. 93957

On October 6, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The issue determined at the contested case hearing was whether the claimant, (DH), who is the respondent, was entitled to supplemental income benefits (SIBS) based on initial entitlement during the filing period from March 16 through June 15, 1993. The hearing officer determined the issue in claimant's favor, finding that she had made good faith efforts to find work commensurate with her ability. The hearing officer's decision reversed the initial determination by the Disability Determination Officer (DDO) for the Texas Workers' Compensation Commission (Commission) that claimant was not entitled to SIBS.

The carrier appeals, but does not protest the determination that claimant is entitled to SIBS. The carrier expressly states that it does not contest any of the findings and conclusions of the hearing officer. Rather, the carrier raises the point that it needs a Notice of Entitlement to begin payment, and that it lacks "an initial determination by which to make its payments" either in the hearing officer's order or through the DDO. Carrier asks that the case be remanded to allow the hearing officer to complete a Notice of Entitlement or be modified by the Appeals Panel to relieve it of the obligation to pay pending receipt of such a notice. The carrier does not argue that it cannot calculate the amount of SIBS that are due in accordance with the hearing officer's order. The carrier points out that the statute and rules of the Commission provide that the Commission makes the first determination of eligibility and determines the amount due, and that, in this case, since the hearing officer reversed a determination that claimant was not eligible, it has been left without an instruction to pay as specified by the law. There is no response from the claimant.

DECISION

We affirm the hearing officer's decision.

The claimant had a 20% impairment rating due to an undisputed compensable back injury which required surgery. She was not employed during March 16 - June 15, 1993. The DDO for the Commission found that she was not eligible for SIBS during that time period, and issued a notice to this effect. The hearing officer determined that claimant made a good faith effort to obtain employment during the period in question and was entitled to SIBS. This reversed and effectively superseded the initial determination of ineligibility made by the DDO in this case.

The report of the benefit review officer indicates that the average weekly wage (AWW) of the claimant is known to the parties, and that the carrier has paid two types of income benefits already based upon that AWW. Carrier now agrees to accept the decision of the hearing officer that the claimant is eligible for SIBS, but pleads an inability to act. Carrier states that the hearing officer has not erred by not doing the computation, but that he should have ordered the DDO to make the calculation. Carrier laments that "the better practice might have been for the parties to have requested that the hearing officer include . . . an issue as to the correct amount of supplemental income benefits. . ."

The need to have included such an "issue" would presuppose, however, that there

could be sincere confusion as to the amount of SIBS due if the claimant prevailed on her entitlement argument. That is plainly not the case here.

Tex. W.C. Comm'n Rules, 28 TEXAS ADMIN. CODE § 130.102 and 130.103 (Rules 130.102 and 130.103), urged by the carrier as the rules that have not yet been followed, require the Commission to initiate a review of the employment status of injured employees who have received payment of impairment income benefits for 15% or greater impairment. These rules, which also state that the Commission shall make the initial calculation, implement the initial determination of eligibility alluded to in the 1989 Act, TEX. LAB. CODE ANN. § 408.143 (formerly TEX. REV. CIV. STAT. ANN. Art. 8308-4.28(k)). If a party disagrees with the Commission's initial determination, that party may then request dispute resolution as set forth in the 1989 Act. We believe that these rules, which also require notice be given of the procedures for contesting the initial determination, are plainly inapplicable after a hearing decision has been issued. The dispute resolution provisions of the 1989 Act are the applicable provisions for giving effect to the hearing officer's decision.

The 1989 Act, Section 410.168(a), directs a hearing officer to issue a written decision after a hearing that includes a determination of whether benefits are due, and an award of benefits due. That decision is binding even during a pending appeal to the Appeals Panel. Section 410.169. We believe the decision of the hearing officer in this case plainly makes such an award of SIBS.

We disagree with carrier's argument that there is a requirement that a DDO issue yet another "initial determination" before the carrier's affirmative obligation to follow the hearing officer's decision applies. There has already been an initial determination of eligibility. The answer given to the claimant was "no." This was appealed, reversed, and effectively superseded by the hearing officer's decision. Carrier has already been given one instruction it seeks in its appeal--"an instruction to appellant to pay supplemental income benefits." There is assuredly no requirement that a hearing officer also include "an instruction to . . . contest the initial determination once entered in favor of respondent."

When the actual computation of the amount of benefits is not in issue at a contested case hearing, it has been the general practice for the parties to work out the arithmetic of the benefits due, seeking appropriate informal direction from the Commission if needed. In this case, it is impossible for the carrier to be in the dark, even without a DDO calculation, about the amount of SIBS due. Given that the claimant's AWW is known to the carrier, and that she didn't work during the period of entitlement (and her earnings were therefore "0"), and the formula for calculating SIBS that is plainly set out in Section 408.144(b), the amount can and should be calculated by the carrier.

We affirm the hearing officer's decision and utterly reject claimant's point of error.

Susan M. Kelley
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge