

APPEAL NO. 950013
FILED FEBRUARY 15, 1995

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), a contested case hearing (CCH) was held on November 10, 1994. He determined, on the only issue ultimately before him at the hearing and before us on this appeal, that the claimant was not eligible for additional advances against future income benefits. The appellant (claimant) asks that the Appeals Panel review the whole hearing and apparently desires a determination that he has not received advances, rather than the respondent (carrier) made gratuitous payments to him. The carrier urges that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The only issue remaining in dispute at the CCH was whether the claimant was eligible for an advance against future income benefits. The claimant sustained a serious injury to his knee on _____. He subsequently underwent several surgeries and ultimately a fusion of his knee. Not in dispute was the subsequent extension of his injury to his other knee and his back with resulting severe pain and ultimately to drug dependency and the requirement for handicap aids. His maximum medical improvement date was statutorily reached on April 5, 1994, and his impairment rating is 29%. The claimant's wife testified that the claimant sustained and continues to sustain financial hardship resulting from his injury and the various treatments. He has received treatment, including surgery in Texas, (State 1), where he and his wife moved at one point, and (State 2), where they moved at another point. As a result of financial hardship, the claimant was paid a \$6,000.00 lump sum payment in April or May of 1993. The claimant was also paid lump sums of \$3,000.00 on April 19, 1994, a lump sum of \$5,900.00 on April 26, 1994, and \$2,500.00 on June 6, 1994. The hearing officer found that these were not payments of accrued income benefits, rather the \$6,000.00 was unaccrued income benefits and the others were unaccrued impairment income benefits (IIBS). There is no great weight or preponderance of evidence against these findings to indicate that they are clearly wrong or unjust. On September 14, 1994, the claimant filed a TWCC-47 form, Employee's Request for Payment of Advance Compensation requesting an advance of \$4,500.00. This was denied by the carrier and formed the basis of the issue in question.

There were no TWCC-47 forms filed by the claimant prior to the three 1994 payments set out above. However, in evidence were copies of three TWCC-24 forms, Benefit Review Conference Agreement, dated April 18, 1994, April 25, 1994, and June 23, 1994, and three checks made out to the claimant in the amount of \$3,000.00, \$5,900.00, and \$2,500.00, respectively. The face of the checks show "in payment of ADVANCE TOWARDS IIBS" and two of the agreements signed by the parties and the benefit review

officer clearly indicate the amounts are advances from IBS and the third shows the advance is for expenses of the claimant returning to (State 2) for examination and a treatment plan by his doctor there (the claimant had returned to Texas to live at this time) and for a program involving drug treatment. The agreements also cover other expense items that the carrier agreed to pay including modification of a vehicle, home health care provided by the claimant's wife and for an adjustable hospital bed. The hearing officer found that the payments were advances and not gratuitous payments or accelerations or commutations of income benefits, that there was no good cause to relieve the parties from their agreements, and that although advances in excess of amounts and numbers of that provided by the 1989 Act have been made and received, it would be inequitable to require the carrier to pay additional advances. The hearing officer concluded that the Texas Workers' Compensation Commission (Commission) does not have authority to grant more than three advances to a particular employee based on the same injury and that the claimant is not eligible for additional advances against future income benefits. The hearing officer also specifically determined that the question of whether the carrier could continue to reduce IBS to recoup the amounts paid was not properly before him and that it "is specifically not addressed herein."

The claimant's position at the hearing was, in essence, that since the statute and rules were not followed regarding advancements of income benefits and that proper forms or requests were not made by the claimant, the payments made by the carrier were "illegal" and therefore gratuitous payments, and further, that such payments should not have any effect on the claimant's income benefits and that his current request for an advancement should be allowed. Section 408.085 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.4 (Rule 126.4) provides for an advance of benefits for hardship. In essence, a carrier can be ordered to pay an advance applied for by a claimant who sets out a hardship on a form prescribed by the Commission. The statute also set out a formula to determine the amount of an advancement and provides that the Commission may not grant more than three advances on the same injury. Rule 126.4 provides that a claimant seeking an advance shall file a TWCC-47 with the Commission and that the form will be forwarded by the Commission to the carrier and that an advance may be ordered if there is a hardship and if the employee is likely to be entitled to income benefits sufficient to cover it. The rule goes on to provide for the amount that can be ordered, the time to be paid, that the advance can be recouped in amounts to be set by the Commission and limits the advances to three.

Clearly, the statutory and regulatory provisions were not strictly followed in the payment of the monies to the claimant in this case. While the record established that the claimant was under some hardship through the course of this injury and that the carrier appeared to be responsive to providing appropriate benefits, it is also apparent that the claimant did not file the prescribed TWCC-47 to initiate an advance of benefits for hardship purposes. However, it is also quite apparent that the parties worked through the

Commission concerning benefits and to alleviate some hardship. This is abundantly clear from the exhibits in evidence showing three separate benefit review agreements, and the three checks resulting therefrom and indicating on their face the "ADVANCE TOWARD IBS." Without question, it is much more advisable to use the specific form prescribed by the Commission and while it can be fatal if significant ingredients are not included in a substitute writing, we have held that the failure to only use the form specified will not result in rejection of the matter involved. See Texas Workers' Compensation Commission Appeal No. 91083, decided January 6, 1992, where we held it was not reversible error where there was a failure to use the prescribed TWCC-69 form, Report of Medical Evaluation. We have stated that the substance of the matter required on a particular form is what must be examined to determine if there is substantial compliance with the statute and rules. Texas Workers' Compensation Commission Appeal No. 94555, decided June 10, 1994; Texas Workers' Compensation Commission Appeal No. 92628, decided January 4, 1993. We note, as was found by the hearing officer, that there are no procedural requirements placed on the carrier under the statute and rule other than complying with the orders of the Commission. Rather, to obtain an advance, the claimant goes through certain procedural steps to obtain an order from the Commission. He did not follow the procedure outlined but it is apparent that in obtaining the advancements, the Commission was directly involved since benefit review conference agreements were signed by the parties and the benefit review officer. The claimant's failure to initiate the specific form listed in the rule should not serve as a basis to hold "illegal" a voluntarily agreed to advancement of benefits particularly where a Commission official is directly involved. And, the result does no violence to the general principle that a claimant should receive all the benefits to which he is entitled, no more and no less. Texas Workers' Compensation Commission Appeal No. 92556, decided December 2, 1992; Texas Workers' Compensation Commission Appeal No. 94074, decided February 23, 1994; Texas Workers' Compensation Commission Appeal No. 94134, decided March 16, 1994. We cannot read an intent in the 1989 Act or Rules to prohibit or discourage the parties from resolving hardship situations and agreeing, particularly under the auspices of the Commission, to arrange for appropriate advancements. Rather, the mechanism and parameters set forth is a method to require a carrier to pay advancements on order of the Commission. Since it was not before the hearing officer, and not a part of his decision and therefore not before us in this appeal, we do not comment on or decide the matter of the method, time period, or amount of recoupment.

For the foregoing reasons, the decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge