

APPEAL NO. 980454

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 2, 1998, a hearing on remand was held. The hearing on remand was held to provide evidence of payment of temporary income benefits (TIBS) from January 25, 1995, through April 30, 1996; all other issues were either not appealed from the original hearing or were determined by Texas Workers' Compensation Commission Appeal No. 972396, decided January 5, 1998. The hearing officer found that TIBS were paid to claimant from January 25, 1995, through September 9, 1996. Appellant (claimant) asserts error in several findings of fact that were not in issue at this hearing on remand. In addition, he again asserts that TIBS paid should have been provided in regard to the arm injury, not the knee injury. Respondent (carrier) states that there was sufficient evidence in the record of the initial hearing to show that TIBS were paid for the time in question and asks for affirmance.

DECISION

We affirm.

This hearing on remand was conducted because the Appeals Panel did not consider the record of the initial hearing to show that TIBS had been paid for the period from January 25, 1995, through April 30, 1996, as the hearing officer found. Claimant had two injuries on two dates, with the knee injury of _____, having been the subject of another hearing with another hearing officer. The date of injury for the claimant's arm, in question at this hearing on remand, was _____.

At the hearing on remand, in addition to evidence in the record from the initial hearing, claimant introduced a copy of a Petition filed in (County). Carrier introduced 16 pages of payment records (Carrier's Exhibit No. 10) regarding claimant. Claimant testified but primarily repeated that TIBS paid were paid for the knee, not the arm.

The hearing officer in her Statement of Evidence indicated that the payment records provided by carrier were provided to show payment of TIBS. Those records certainly show payments of income benefits to claimant during the time period the hearing officer originally found TIBS to have been paid and for which the Appeals Panel asked for a showing of payment. The payment records provided contain amounts of payment and various unexplained abbreviations.

The hearing officer also noted that the Payment of Compensation or Notice of Refused or Disputed Claim Interim (TWCC-21) provided as Carrier's Exhibit No. 7 at the original hearing also showed that TIBS had been paid for the time in question. That exhibit does show that compensation had been paid from January 23, 1995, to September 9, 1996, for a knee injury that occurred in 1994.

The hearing officer in Finding of Fact No. 12 on remand found that claimant was paid TIBS for the period of January 25, 1995, through September 9, 1996, for the knee injury (another finding of fact showed that impairment income benefits were overlapping somewhat in their payment). She referenced Carrier's Exhibits No. 7 and No. 10 either at the hearing or in her decision. These exhibits provide sufficient evidence to conclude that some income benefit was paid for the period from January 25, 1995, through April 30, 1996. We note that Exhibit No. 10 does not use the words "TIBS" or "temporary income benefits" and shows that on July 31, 1995, the carrier reduced claimant's payment from \$176.30 to \$164.55, although maximum medical improvement was shown to have occurred on July 31, 1996, according to Carrier's Exhibit No. 7 (for the knee injury, not the arm injury). Nevertheless, taking the exhibits together, there is evidence that income benefits were paid during the period in question and the hearing officer could conclude that TIBS were paid from January 25, 1995, through April 30, 1996.

The hearing officer is correct in stating that TIBS are not to be paid for two or more injuries during the same period of time (no double payments of TIBS). Therefore, whether TIBS were paid for the _____, injury or the _____, injury during a particular period of time does not affect the amount of TIBS to be paid during that time unless the average weekly wage varied in the period between the injuries.

As stated, claimant also took exception to certain findings of fact that were repeated from the initial hearing. Those findings of fact were not in issue before this hearing on remand and another appeal relative to them will not be considered.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge