

APPEAL NO. 990337

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 2, 1999. The parties reached an agreement that the respondent (claimant) sustained a compensable left elbow injury in the course and scope of her employment on or about _____. The appellant (carrier) filed an appeal, asking that we strike some of the language in the decision section of the hearing officer's decision and order, arguing that it creates an ambiguity as to whether it is required to pay temporary income benefits (TIBS). The carrier maintains that it is not required to pay those benefits because the claimant has already received TIBS for another injury. The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed, as modified.

There was only one disputed issue before the hearing officer at the hearing, that of whether the claimant sustained a compensable left elbow injury on or about _____. The parties entered an oral agreement that the claimant had sustained a compensable left elbow injury in the course and scope of her employment on or about _____. As noted above, the carrier has filed this appeal asking that we strike some of the language in the decision section of the hearing officer's decision. The carrier asserts that the claimant sustained a compensable left shoulder injury for which she has already been paid TIBS, apparently for the same period that it believes the claimant could claim disability for her left elbow injury. In support of its argument, the carrier cites the decision in Texas Workers' Compensation Commission Appeal No. 93794, decided October 20, 1993, where we held that a carrier is not liable for TIBS for two different injuries during the same period of time. The carrier did not offer any evidence to prove its assertions; however, because no issue of disability was before the hearing officer, we agree that the language relating to disability and TIBS is surplusage, unnecessary to the decision and order. Accordingly, we will modify the decision section by striking that language. That section will now read, as follows:

DECISION

Claimant did suffer a compensable left elbow injury in the course and scope of her employment on or about _____.

As modified, the hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge