

## APPEAL NO. 990559

This appeal arises 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 January 6, 1999. The issue at the contested case hearing (CCH) was is the carrier entitled to recoup a previous overpayment from the claimant's supplemental income benefits (SIBS). The hearing officer determined that the carrier is not entitled to recoup a previous overpayment from the claimant's SIBS. The appellant (carrier herein) asserts that the hearing officer erred in finding that the carrier is not entitled to recoup a previous overpayment from claimant's SIBS when such overpayment is the result of a timely contribution determination. The respondent (claimant herein) urges that the hearing officer's decision is correct as a matter of law and should be affirmed.

### DECISION

We reverse and render.

No testimony was taken from either party at the CCH and the only evidence was in the form of admitted documents. The facts in this case are largely undisputed. The claimant sustained a low back injury on \_\_\_\_\_. The claimant was given an eighteen percent impairment rating (IR) and had an earlier compensable injury which had resulted in a thirteen percent IR. On May 28, 1997 the carrier requested contribution, but it was denied by the Commission. On July 7, 1998 the parties signed a benefit dispute agreement (TWCC-24) agreeing that the claimant reached maximum medical improvement (MMI) on September 30, 1997, and the IR was eighteen percent. It was also agreed that the carrier was entitled to reduce the claimant's impairment and supplemental income benefits by 65% due to contribution. The parties stipulated at the CCH that, as of the beginning of the first quarter of SIBS, the claimant had been overpaid in the amount of \$4000.00, and the overpayment was not the fault of the claimant. The carrier's appeal states that there was an ongoing dispute over the claimant's date of MMI and IR from June 1997 until an agreement was reached on July 7, 1998. The claimant's response urges that the hearing officer correctly made no finding of fact that the request for contribution was timely and states that the carrier waited a full year after they knew that contribution was appropriate to get a determination of contribution.

Both parties on appeal cite differing Texas Workers' Compensation Commission Appeals Panel decisions as authority for their respective positions. The carrier relies on Texas Workers' Compensation Commission Appeal No. 951323, decided September 25, 1995 and Texas Workers' Compensation Commission No. 950699, decided June 15, 1995. In response, the claimant states that in those decisions, the Appeals Panel erroneously relied on Section 408.084(a) for the proposition that reduction for contribution and recoupment for overpayments due to contribution were synonymous, and those cases were specific on their facts and distinguishable from the present case.

The hearing officer made the following Finding of Fact in his decision and order:

4. In accordance with Appeals Panel Decision Nos. 92291 [Texas Workers' Compensation Commission Appeal No. 92291, decided August 17, 1992], 951673 [Texas Workers' Compensation Commission Appeal No. 951673, decided November 22, 1995], 951544 [Texas Workers' Compensation Commission Appeal No. 951544], and 960303 [Texas Workers' Compensation Commission Appeal No. 960303, decided March 22, 1996] recoupment from future supplemental income benefits would leave the claimant undercompensated which would be contrary to the intent of the 1989 Act.

The Appeals Panel decisions relied on by the hearing officer, while involving issues of recoupment from future SIBS, are distinguishable from the facts of this case in that this case involves a contribution issue.

In Appeal No. 951323, *supra*, the Appeals Panel reversed the hearing officer's decision denying a credit against future SIBS and rendered a new decision that the carrier could credit an overpayment against future SIBS, where the overpayment was the result of a late determination of the percentage of contribution to which the carrier was entitled for a prior compensable injury. In Appeal No. 950699, *supra*, the majority opinion affirmed a hearing officer's determination permitting the carrier to recoup overpaid amounts of impairment income benefits (IIBS) and SIBS based upon contribution. Contribution is specifically authorized in Section 408.084. Only the Commission can establish contribution. Texas Workers' Compensation Commission Appeal No. 93695, decided September 22, 1993. A carrier's liability is statutorily reduced in a contribution case and we have determined that a late resolution of the contribution issue should not thwart the carrier's right to contribution where it has been established.

We reverse the hearing officer's decision and order and render that, under the facts of this case, carrier is entitled to recoup a previous overpayment from the Claimant's SIBS.

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Dorian E. Ramirez  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Judy L. Stephens  
Appeals Judge