

APPEAL NO. 990704

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 3, 1999. The issue before him was whether the respondent (self-insured) is entitled to reduce the appellant's (claimant) supplemental income benefits (SIBS) to recoup an advance on impairment income benefits (IIBS) paid to the claimant by the self-insured. The hearing officer determined that it is. The claimant appealed, stated that the facts are not in dispute, contended that the hearing officer erred in making his determination, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the self-insured is not entitled to recoup the unrecouped \$700.00 of the \$1,000.00 advance. The self-insured responded, urged that Appeals Panel decisions cited by the claimant are distinguishable from the facts in this case, and requested that the decision of the hearing officer be affirmed.

DECISION

We affirm.

The claimant fell at work on _____, injuring her left hand, arm, and shoulder and head. She reached maximum medical improvement on March 6, 1997, with a 29% impairment rating and began receiving IIBS.¹ In a Request for Payment of Advanced Compensation (TWCC-47) dated May 12, 1998, the claimant requested an advance payment of \$1,000.00 to pay past due bills and purchase clothing for her children. On June 8, 1998, the Texas Workers' Compensation Commission (Commission) approved the request and issued a Commission order by checking a block and inserting numbers into blank spaces. The order is as follows:

The Commission finds that both a financial hardship exists for the employee and the employee is likely to be entitled to income benefits sufficient to cover the amount of the advance.

The [Commission] orders that the insurance carrier is to make an advance of \$1,000.00 pursuant to Art. 8308-4.32 [Now Section 408.085.] of the Texas Workers' Compensation Act. The insurance carrier must pay the advance, as ordered, within 7 days of the receipt of notice by its designated (City) representative.

¹Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §126.4 (Rule 126.4) is entitled Advance of Benefits Based on Financial Hardship. Section (a) of that rule provides that an employee receiving IIBS must request acceleration of IIBS under Section 408.129 before seeking an advance of benefits. Section 408.129 provides that the accelerated payment may not exceed a rate of payment equal to the claimant's net preinjury wage and that the duration of IIBS to which the claimant is entitled shall be reduced to offset the increased payments caused by the acceleration. Rule 130.7(d) provides that acceleration of IIBS does not reduce the impairment period for purposes of the date that entitlement to SIBS begins. There is no indication that the claimant applied for an acceleration of IIBS.

Reduce Income Benefit Amount \$100.00 for 10 weeks.

The self-insured received the order on June 11, 1998, and paid the advance as ordered. The IBS payments the claimant received on June 18 and 25 and July 2, 1998, were reduced by \$100.00. The self-insured began using a different third party administrator, and the claimant began receiving full weekly IBS payments without the \$100.00 reduction. In a letter dated October 7, 1998, the Commission advised the claimant that the first quarter for SIBS would begin on November 6, 1998, and would end on February 4, 1999, and that she was entitled to SIBS for that quarter. A copy of the letter was sent to the self-insured. Apparently, the self-insured requested that SIBS payments be reduced to recoup the \$700.00 of the advance that had not been recouped.

At the hearing and on appeal, the claimant cited several Appeals Panel decisions in which the carriers were not permitted to recoup overpayments of income benefits. None of the decisions cited by the claimant involved recoupment of an advance. In the discussion section in his Decision and Order, the hearing officer noted that none of the Appeals Panel decisions cited by the claimant concerned a Commission-approved advance with instructions to reduce future income benefits and set forth the provisions of Rule 126.4(e) and (f).

Rule 126.4 provides as follows:

- (1) An employee seeking an advance of income benefits based on financial hardship shall submit a written application form TWCC-47 that states the basis for the hardship to the commission. The application must state the employee understands that if an advance is granted the amount of future weekly benefit payments will be reduced. An employee receiving [IIBS] must request acceleration of those benefits under the Act, '4.321, before seeking an advance of benefits.
- (2) The commission shall forward a copy of the employee's application to the carrier and shall consider the employee's application and may order an advance if it determines that both a hardship exists for the employee and the employee is likely to be entitled to income benefits sufficient to cover the amount of the advance.
- (3) An advance will not be granted to an employee who is receiving income benefits under this Act of at least 90% of the employee's net pre-injury wage. The net pre-injury wage of an employee is 85% of the average weekly wage, for this section.
- (4) The commission shall notify the insurance carrier and the injured employee in writing when an advance is ordered. The notice shall include the amount of the advance to be paid; this amount shall not exceed four times the maximum weekly benefit for temporary income

benefits as computed under the Act, '4.11 [Now Section 408.061.]. The insurance carrier shall pay an advance ordered by the commission within seven days of the receipt of notice from the commission by the carrier's (City) representative.

- (5) After the carrier has paid an advance, it shall reduce the amount of the weekly income benefits in an amount set by the commission, which takes into account the amount advanced and the number of weeks that benefits are likely to be paid in the future. The weekly benefits may be paid in this reduced amount until the carrier has recouped the amount advanced.
- (6) The total amount of benefits paid to the employee through weekly payments and advances based on hardship shall not exceed the amount the employee would have received under a normal payment schedule. No more than three advances shall be granted based on the same injury.

Section 408.127 provides for reduction of IIBS for reimbursable employer payments made under Section 408.003 and states that the Commission shall adopt rules and forms to ensure the full reporting and the accuracy of reductions and reimbursements made under the section. The Commission has adopted a form, but has not adopted rules implementing Section 408.127. Commission rules provide for recouping for acceleration of IIBS and for advance payments based on hardship, but do not contain provisions for recouping overpayments, whether because of a mistake of the carrier or because of inappropriate activity by a claimant. In the absence of such rules, the Appeals Panel has written decisions to resolve disputed issues concerning recoupment of overpayments. The claimant contends that those Appeals Panel decisions control. We do not agree, and look to the provisions of the 1989 Act and Commission rules to determine if the hearing officer committed error in the case before us. Under Commission rules, if the acceleration of IIBS had been applied for and approved, the total number of weekly IIBS payments would have been reduced to accomplish the recoupment.²

Rule 126.4(e) provides that weekly benefits may be paid in the reduced amount until the carrier has recouped the amount advanced and Rule 126.4(f) provides that the total amount of benefits paid to the employee through weekly payments and advances based on hardship shall not exceed the amount the employee would have received under a normal payment schedule. In her appeal, the claimant contends that SIBS are monthly benefits, not weekly benefits, and that the advance cannot be recouped from SIBS because they are not weekly benefits. Section 408.144 is entitled Computation of [SIBS] and provides in part:

²An acceleration of IIBS probably would not have timely provided the claimant with the money she desired. A review of the claimant's average weekly wage, her weekly IIBS payments, and the provisions of Rule 126.4(c) indicates that the application for an advance should not have been approved. Nonetheless, it was.

- (1) [SIBS] are calculated quarterly and paid monthly.
- (2) Subject to Section 408.061 [Entitled Maximum Weekly Benefit], the amount of a supplemental income benefit for a week is equal to 80 percent of the amount computed by subtracting the weekly wage the employee earned during the reporting period provided by Section 408.143(b) from 80 percent of the employee's average weekly wage determined under Section 408.041, 408.042, 408.043, or 408.044.

Rule 130.102(d) concerns calculation of SIBS and provides:

Calculation. The monthly [SIBS] payment is calculated as follows:

- (1) add the claimant's actual and offered wages for each week of the filing period;
- (2) divide the total by the number of weeks in the filing period;
- (3) subtract the quotient from 80% of the claimant's average weekly wage;
- (4) multiply the remainder by .80, not to exceed the maximum weekly income benefit under the Act, Article 8308-4.11; and
- (5) multiply the product by 4.34821.

While SIBS are paid monthly, the amount is based upon a weekly benefit. The claimant's argument that SIBS are not a weekly benefit is not persuasive.

The hearing officer did not err in applying Commission rules to resolve the disputed issue and there is no showing that he did not properly apply the rules in resolving the disputed issue. He did not err in not applying the Appeals Panel decisions cited by the claimant. We affirm his decision and order.

Tommy W. Lueders
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge