

APPEAL NO. 992039

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 August 18, 1999. Although the hearing officer's decision does not state the issue, based on the record and appellant's (carrier) appeal, the issue announced was:

What is the correct amount to pay to the Subsequent Injury Fund [SIF] for decedent's death benefits?

After a very brief CCH, the hearing officer determined that the maximum weekly death benefit was \$491.00, the discount/interest rate was 4.89% and that "[d]eath benefits began to accrue the day after [d]ecedent's death, (date of injury)." The hearing officer's decision was as follows:

Death benefits are to be paid in a lump sum to the [SIF]. The payment is based on a weekly payment of \$311.54. The interest/discount rate is 4.89%. The [SIF] is entitled to receive death benefits beginning June 12, 1999, the day the last beneficiary ceased to be eligible for death benefits. The [SIF] at that time was eligible to received [sic] death benefits for 250 weeks and 1 day. (Benefits were paid to the beneficiaries for 113 weeks and 6 days for the period date of injury through (end of allowed time). As of the date of this hearing \$2,110.82 in weekly death benefits and \$7.01 in interest had accrued. As of the date of this hearing \$58,480.51 had not accrued and remained for future weekly payments. As of the date of this hearing the discounted value of \$58,480.51 at a discount rate of 4.89% was \$52,100.28. As of the date of this hearing the lump sum owed to the [SIF] was \$54,218.11. Interest continues to accrue on both the death benefits due as of the date of this hearing and the death benefits that will accrue until the day payment is made. The amount of the discount continues to diminish until the day payment is made.

Carrier timely appealed that decision, asserting that the hearing officer had failed to credit the carrier for the 104-week death benefit lump sum of \$24,299.60 paid by carrier to decedent's spouse pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 132.7(b) (Rule 132.7(b)), and that the \$58,480.51 "accrued and remained for future weekly payments" amount was incorrect. Carrier requested that we reverse the hearing officer's decision, giving carrier credit for the \$24,299.60 paid to the decedent's spouse and render "a decision that correctly computes the amount [carrier] owes the [SIF]."

That appeal, although logged in to the Texas Workers' Compensation Commission (Commission) Hearings Division, was never forwarded to the Appeals Panel for resolution.

Instead, the file has what is labeled an "Order on Commission's Motion to Correct Clerical Error," which recites that the original hearing officer had made a "clerical error" and that the "decision does not include the correct amounts payable by the Carrier to the [SIF]." (We also note that the Appeals Panel does not have the "Motion to Correct Clerical Error.") The order then goes on to say that the original "Decision and Order is modified in pertinent part to read as follows":

### **DECISION**

Death benefit[s] are to be paid in a lump sum to the [SIF]. The payment is based on a weekly payment of \$311.54. The interest/discount rate is 4.89%. The entitlement to death benefits began to accrue on June 12, 1999. As of the date of this hearing \$3115.40 in weekly death benefits and \$12.46 in interest had accrued. As of the date of this hearing \$74,814.11 had not accrued and remained for future weekly payments. As of the date of this hearing, the discounted value was \$66,947.73. As of the date of this hearing, the lump sum owed to the [SIF] was \$70,075.59. Interest continues to accrue on both the death benefits due as of the date of this hearing and the death benefit[s] that will accrue until the day payment is made. The amount of the discount continues to diminish until the day payment is made.

The modified order was dated September 24, 1999, effective June 24, 1999, and was signed by the Director, Division of Hearings. The order was receipted for by the carrier on September 28, 1999. An internal memo, dated October 4, 1999 (in the appeal file, but obviously not part of the record), notes that "the computation of the amount paid to the SIF did not take into consideration the fact that the carrier was required to pay the spouse an additional 104 weeks of benefits after the date of the remarriage."

Carrier filed a "Request for Review on Corrected Decision" on October 7, 1999, asserting that the "Corrected Order . . . erroneously changed a factual determination by converting the amount of the average weekly wage into the amount of the weekly death benefit" and that the "Corrected Order" compounded the problem by not using the reduced death benefit amount in calculating the amounts due the SIF; that the corrected order incorrectly counted dates, and still failed to credit carrier with the widow's lump sum payout.

Carrier, in its October 5, 1999, appeal, purported to do the correct calculations; however, we have no record, nor any evidence, to verify the amounts represented by carrier. Carrier further requests that we render a decision that orders the SIF to reimburse overpayments, if any, made by the carrier.

## DECISION

We reverse the hearing officer's decision and order, and the corrected order, and remand the case back to the hearing officer to convene a hearing on remand, to receive evidence and documentation of the correct figures to be used, and render a new decision using the correct weekly death benefit amount, calculate and credit carrier for the sums paid the decedent's widow, correctly calculate and reference the amount owed to the SIF, including discount and interest, and determine whether any overpayments have been made. See Sections 408.181 through 408.186 and applicable rules.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Tommy W. Lueders  
Appeals Judge