

APPEAL NO. 000487

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 February 14, 2000. The issue at the CCH was to determine the average weekly wage (AWW) of the appellant (claimant). The hearing officer determined that the AWW is \$523.09. Claimant appeals, contending that the hearing officer erred in the method of calculation of the AWW. There is no response from the self-insured ("carrier" herein.)

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that his AWW is \$523.09. Claimant asserts that: (1) the Texas Workers' Compensation Commission (Commission) should include "compensatory time, holiday time, vacation time, overtime, pay advancement," and projected pay raises in calculating his AWW; (2) the hearing officer should have considered his "actual earnings" for the 13-week period; and (3) the hearing officer should have calculated the AWW by dividing the "total gross monthly salary" by four.

Claimant did not testify at the CCH. Wage statements were admitted, but given the fact that claimant did not appeal the amount of his monthly wages or indicate what he believes his "actual earnings" were in applicable the 13-week period, we will not set forth the information from the wage statements in the record. There is nothing in the record to indicate that claimant took vacation, holiday, or other leave during the 13 weeks prior to the injury. Claimant's time cards do not clearly set forth what days claimant was not working during the 13-week period.

The hearing officer determined that: (1) claimant's gross monthly wages are \$2,127.00; (2) \$2,127.00 divided by 4.34821 equals \$489.17; (3) the amount of "additional monetary benefits" divided by 4.34821 equals \$33.92; and (4) claimant's AWW is the sum of \$489.17 and \$33.92, which is \$523.09.

Section 408.041(a) regarding AWW provides:

Except as otherwise provided by this subtitle, the [AWW] of an employee who has worked for the employer for at least the 13 consecutive weeks immediately preceding an injury is computed by dividing the sum of the wages paid in the 13 consecutive weeks immediately preceding the date of the injury by 13.

Claimant did not complain on appeal about the amount of monthly wages or the "additional monetary benefit" found by the hearing officer. In his brief, claimant did not indicate which wage statement he believes is accurate, state what his actual wages were, or dispute any amounts listed in the wage statements in the record. Regarding the

assertion that the Commission should include “compensatory time, holiday time, vacation time, overtime, pay advancement,” and projected pay raises in calculating his AWW, the Appeals Panel has addressed a similar assertion in a prior case. Texas Workers’ Compensation Commission Appeal No. 952194, decided February 12, 1996. Because it does not appear that claimant took vacation time or other leave time during the 13-week period, and because the potential pay advancement and projected pay raises were not paid during that period, we perceive no error in the hearing officer’s determinations in this regard. Appeal No. 952194.

Regarding the assertion that the hearing officer should have considered claimant’s actual earnings for the 13-week period, we perceive no error in the hearing officer’s calculations of his actual earnings given the various wage statements before her. Claimant asserts that the hearing officer should have calculated the AWW by dividing the “total gross monthly salary” by four. We assume that claimant’s contention is that there are four weeks in a month, so this calculation would result in the true weekly wage. However, one of the months that claimant worked had 31 days which, divided by 7, would equal 4.42 weeks. Claimant’s method does not appear to be the most accurate method of calculating the actual earnings for the 13-week period. We have considered claimant’s assertions regarding what he believes are his actual earnings and we perceive no error in the hearing officer’s calculations in this case.

We have reviewed the record and claimant’s contentions that the hearing officer improperly calculated the AWW as though the issue was a supplemental income benefits (SIBS) issue; that the method of calculation is biased and not in keeping with the 1989 Act; and that the method of calculation the hearing officer used reduced his benefits, and we perceive no reversible error.

We affirm the hearing officer’s decision and order.

Judy L. Stephens  
Appeals Judge

CONCUR:

Thomas A. Knapp  
Appeals Judge

Alan C. Ernst  
Appeals Judge