

## APPEAL NO. 000762

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 convened on February 1, 2000. That hearing was recessed because the respondent (claimant) did not appear. An appropriate show-cause letter for this failure to appear was sent to the claimant. The CCH was reconvened on February 28, 2000. The claimant appeared at this hearing; however, the hearing officer, again continued the case because a security guard was not present. The CCH was reconvened on March 28, 2000. The claimant failed to appear and no evidence was presented on his behalf. The hearing officer proceeded to issue a decision and order in which she determined that the claimant was not entitled to supplemental income benefits (SIBs) for the first, second, or third compensable quarters. The appellant (carrier) appealed, seeking only to reform the decision and order to conform to court proceedings relevant to the disputed issues. The appeal file does not contain a response from the claimant.

### DECISION

Affirmed as reformed.

The compensable injury in this case has been the subject of several prior proceedings. See Texas Workers' Compensation Commission Appeal No. 991746, decided September 15, 1999 (Unpublished), which dealt with the claimant's impairment rating (IR) and, according to the carrier, is now pending judicial review; Texas Workers' Compensation Commission Appeal No. 982150, decided October 26, 1998 (Unpublished), which dealt with the extent of the compensable injury and is apparently not undergoing judicial review; and Texas Workers' Compensation Commission Appeal No. 971054, decided July 11, 1997 (Unpublished), which also dealt with the extent of the compensable injury. According to the representations of the carrier and the evidence admitted at the CCH, a civil jury reversed Appeal No. 971054 and found that the compensable injury did not include lumbar or cervical injuries, head injuries, a seizure disorder, post-concussive syndrome, and post-traumatic stress disorder. At the time of the CCH on March 28, 2000, the presiding judge had not yet entered a judgment on this verdict.<sup>1</sup>

The carrier does not appeal the determination that the claimant was not entitled to SIBs for the first three quarters, but instead requests reformation of certain findings of fact and conclusions of law. Specifically, Finding of Fact No. 3 states: "The Claimant attained maximum medical improvement on June 9, 1998, with a 19% [IR]; he did not commute impairment income benefits." The carrier requests that this finding be reformed to read: "The

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<sup>1</sup>Attached to the carrier's appeal was a copy of the final judgment signed by the presiding judge on March 30, 2000, two days after the CCH.

Commission [Texas Workers=Compensation Commission] has previously determined that the claimant attained maximum medical improvement on June 9, 1998, with a 19% impairment rating; however, the carrier has timely appealed this determination. The claimant did not commute impairment income benefits." The purpose of the proposed reformation, according to the carrier, is to avoid the need to file another appeal of the IR. There being no objection of record by the claimant to this request, and in order to more accurately reflect the facts of this case, we reform Finding of Fact No. 3, as follows: The Commission has previously determined that the claimant attained maximum medical improvement on June 9, 1998, with a 19% impairment rating; however, the carrier has sought judicial review of this determination. The claimant did not commute impairment income benefits.

The carrier also seeks reform of Findings of Fact Nos. 4, 5, and 6, which exclusively concern the dates of each SIBs quarter in issue, by insertion of the words "Based upon a 19% impairment rating" at the beginning of each finding. We reform these findings as requested.

Finally, the carrier similarly seeks reformation of Conclusions of Law Nos. 3, 4, and 5, each of which states that the claimant is not entitled to SIBs for one of the quarters in issue and again states the dates of the quarters. We reform these conclusions by the insertion of the words "Based upon a 19% impairment rating" at the beginning of each conclusion of law.

The decision and order of the hearing officer is affirmed as reformed.

Alan C. Ernst  
Appeals Judge

CONCUR:

Philip F. O'Neill  
Appeals Judge

Elaine M. Chaney  
Appeals Judge