

APPEAL NO. 001711

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 26, 2000. The hearing officer determined that the appellant (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appealed, contending that his retirement income from the respondent (self-insured) does not constitute wages and should not be used to reduce his SIBs benefits. The appeal file does not contain a response from the self-insured. The hearing officer's decision on the entitlement to SIBs for the first quarter has not been appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

This decision should not be cited as affirming the hearing officer's decision on entitlement to SIBs as that decision became final as noted above. Among his findings, the hearing officer determined:

FINDING OF FACT

8. During the qualifying period, the Claimant was paid a retirement pay from the State, which constituted wages from employment.

The hearing officer's Decision states:

DECISION

The Claimant is entitled to [SIBs] for the first quarter. The Self-Insured is liable for the amount of [SIBs], less the amount of retirement income received by the Claimant from the Employer. Accrued but unpaid income benefits, plus interest, will be paid in a lump sum.

Other than testimony that the claimant was 64 years old during the qualifying period, that pain from the compensable injury had forced him into regular retirement, and that otherwise the claimant could have worked until age 70, there was no evidence or argument that the claimant's SIBs should or could be reduced by the amount of his retirement income. This was not a proposition advanced by the self-insured, which principally argued that the claimant had some ability to work and had in fact worked until he took his retirement.

Section 408.144 entitled "COMPUTATION OF SIBs" speaks in terms of "subtracting the weekly wage the employee earned during the reporting period . . ." (Emphasis added.) Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.101(9) (Rule 130.101(9)), the

definitions section for the new SIBs rules, effective November 28, 1999, defines "wages" as "[a]ll forms of remuneration payable for personal services rendered during the qualifying period" as defined in Section 401.011(43). (Emphasis added.)

"Wages" is defined in Section 401.011(43) as:

all forms of remuneration payable for a given period to an employee for personal services. The term includes the market value of board, lodging, laundry, fuel, and any other advantage that can be estimated in money that the employee receives from the employer as part of the employee's remuneration. [Emphasis added.]

Fairly clearly retirement benefits were not being paid for personal services rendered during the qualifying period. Nor is retirement income mentioned in Rule 126.1, which lists examples of both pecuniary wages and nonpecuniary wages. The hearing officer does not cite any authority in either the 1989 Act or the Texas Workers' Compensation Commission rules to support the position that SIBs can be reduced by the amount of retirement income the injured worker receives.

The claimant, in his appeal, argues that his retirement pay consists of money set aside during his employment and that neither Social Security benefits nor other savings that he may have should be "factored into the analysis of disability [sic, disability in workers' compensation law is a term of art not applicable here]." We agree and find no provision which designates retirement income (contributory or otherwise) as wages or that such retirement income (or Social Security benefits) can be used to reduce or offset SIBs.

Accordingly, we reverse the hearing officer's Finding of Fact No. 8 and so much of the hearing officer's decision that provides that the claimant's entitlement to SIBs is offset by "the amount of retirement income received by the Claimant," as being incorrect as a matter of law, and render a new decision omitting Finding of Fact No. 8 and the provisions reducing SIBs by the amount of retirement income received.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge