

## APPEAL NO. 002508-S

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 convened on July 27, 2000, with the record closing on September 11, 2000. The issues decided by the hearing officer were whether the appellant (self-insured) would be allowed to recover an overpayment of income benefits by withholding travel reimbursement for medical treatment and the amount of travel reimbursement. The hearing officer determined that the self-insured failed to establish that the respondent (claimant) is indebted to the State of Texas and that the claimant is entitled to \$1,058.40 in travel reimbursement for medical care.

The self-insured appeals, asserting that the hearing officer erred in denying recoupment of overpaid temporary income benefits (TIBs) from the mileage reimbursement requested by the claimant. There is no response from the claimant found in the file.

### DECISION

Affirmed.

The claimant was employed at the (employer) on \_\_\_\_\_, and sustained a compensable injury. The parties stipulated that the self-insured, through the State Office of Risk Management (SORM), has approved a portion of the amount claimed by the claimant, evidently referring to outstanding requests for reimbursement of travel expenses for medical treatment, and that the claimant received an overpayment of TIBs in excess of the total travel reimbursement requested by the claimant.

The self-insured states in its brief that:

[I]n this claim, Carrier is not asking the hearing officer to deny the payment of travel expenses. Carrier concedes that Claimant is entitled to payment for travel which she has proved under TWCC [Texas Workers' Compensation Commission (Commission)] Rule 134.6 [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 134.6]. However, Carrier is asking that Carrier be able to recover the overpayment made to Claimant during her income benefit period.

In so stating, the self-insured equates payment of medical expenses and payment of income benefits, stating that “[a]n offset is proper because, although there is a difference in the benefits which [the claimant] was overpaid and those which she is now claiming, there is no dispute that the payee and payor in both instances are the same.” At the hearing, the self-insured candidly admitted that it believed that it would be entitled to recoup an overpayment of income benefits from a medical payment which would have otherwise been made to a health care provider. We cannot agree with the self-insured's contention, and note that the self-insured cites no provision in the 1989 Act or in a Commission rule providing for the claimed recoupment or settlement nor does the self-insured cite any Appeals Panel decision to support its claim.

Offset and recoupment of overpayments of income benefits have been addressed by the Appeals Panel a number of times. The first case to address recoupment of an overpayment not otherwise statutorily provided for was Texas Workers' Compensation Commission Appeal No. 92291, decided August 17, 1992. However, we have never had the occasion to address the proposition now tendered by the self-insured, that a carrier may recoup an overpayment of income benefits from medical benefits. In now doing so, we hold that income benefits and medical benefits are of a different kind and character and one may not be reached to satisfy an overpayment of the other, no matter what the reason for the overpayment.

The hearing officer's determination that the claimant is entitled to the payment of travel expenses in the amount of \$1,058.40, not having been appealed by either party, has become final.

The decision and order of the hearing officer are affirmed.

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Kenneth A. Huchton  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge