

## APPEAL NO. 010717

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 March 15, 2001. The hearing officer found that the appellant (claimant) did not meet the criteria for supplemental income benefits (SIBs) of earning less than 80% of her preinjury average weekly wage (AWW) for her first, second, third, and fourth quarters of SIBs and was therefore not entitled to SIBs for those quarters. Because she was not entitled to SIBs for the first four quarters, he further held that she permanently lost entitlement to that benefit. He agreed that she had no ability to work (due to surgery and recovery) for the qualifying periods for her fifth and sixth quarters.

The claimant appeals the determinations regarding her third and fourth quarters and essentially argues that the hearing officer failed to correctly compute her earnings when she returned to work and she was still entitled to some small amount of SIBs during the quarters under review. The respondent (carrier) responds that the factual determinations and application of the law by the hearing officer were correct.

### DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in holding that the claimant earned, for four consecutive quarters, more than 80% of her preinjury AWW and, consequently, permanently lost entitlement to SIBs. The claimant said she had returned to her job for the employer, a school district (the self-insured herein) for the qualifying periods of the first four quarters under review, which ran from February 4 through May 5, 1999 (first quarter), and then from April 22, 1999, through January 21, 2000. The overlap in periods was due to the effective date of new SIBs rules.

The hearing officer figured the claimant's AWW was \$357.10, which included the amounts paid by her employer for her health insurance. The claimant said she left work to have surgery on January 9, 2000. Her paycheck stubs are in evidence for the quarters under review. When the claimant was asked if her return to work was for the same wages paid prior to her injury, she stated that her employment was actually for more pay as the employer would raise the wage for the position annually. As a school district employee, she worked for the school year but was paid throughout the year. However, she also worked on summer food service and was paid an additional amount for this.

We have reviewed the hearing officer's computations. If anything, he understated the amount of money earned by the claimant after she returned to work as he did not include the amounts that her employer paid for her insurance coverage (which of course had been included in her preinjury AWW). Even without this being included, he correctly noted that she was paid more than 80% of her preinjury AWW.

While this is an unfortunate case in which the effects of the injury caused the claimant to be unable to work after more than a year, the legislature has provided in Section 408.146(c) that failure to qualify for SIBs for four consecutive quarters will preclude further entitlement. Unless and until this is addressed by the legislature, the Texas Workers Compensation Commission must apply the law as written. The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this was the case here, and affirm his decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge