

APPEAL NO. 013068  
FILED FEBRUARY 1, 2002

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 November 8, 2001. The hearing officer determined that the appellant (claimant) is not entitled to impairment income benefits (IIBs) after December 22, 2000, the date of expiration of 401 weeks from the date of injury. The claimant appeals, arguing that she is entitled to full IIBs based upon her 28% impairment rating (IR), as the IR was assessed before 401 weeks had expired after the injury. The respondent (self-insured) did not respond to the appeal.

DECISION

Affirmed.

The relevant provision of the 1989 Act is Section 408.083, which provides:

[effective for dates of injury before September 1, 1995.] TERMINATION OF RIGHT TO TEMPORARY INCOME, IMPAIRMENT INCOME, AND SUPPLEMENTAL INCOME BENEFITS. An employee's eligibility for temporary income benefits [TIBs], [IIBs], and supplemental income benefits [SIBs] terminates on the expiration of 401 weeks after the date of injury.

The parties stipulated that December 22, 2000, is 401 weeks following the claimant's date of injury, \_\_\_\_\_. The evidence indicated that Section 503.041 applied to this case, and that the claimant never received any income benefits (in the form of TIBs) because the claimant remained on the payroll, using earned annual and sick leave. The hearing officer determined that income benefits did not accrue to the claimant until October 12, 2000, the date of maximum medical improvement (MMI) certified by the designated doctor. The claimant was entitled to IIBs beginning on the day after the claimant reached MMI, as provided in Section 408.121(a). The claimant argues that she is entitled to the full 84 weeks of IIBs based on her 28% IR because the IR was assessed and she became eligible for IIBs before the expiration of 401 weeks after the injury, and because there are options under Section 408.128 for commutation (payment in a lump sum) and Section 408.129 for acceleration of IIBs payments, which would have allowed her to receive payment for those benefits prior to the expiration of 401 weeks. We do not agree with the claimant's interpretation. We previously discussed the application of Section 408.083 in Texas Workers' Compensation Commission Appeal No. 990667, decided May 13, 1999. In that case, we found that the 401-week period ended on December 3, 1998, and we concluded that the claimant was not entitled to SIBs for any portion of the quarter beyond that date. That resulted in a payment of SIBs from November 1 to December 3, 1998, even though the claimant otherwise established her entitlement to SIBs for the entire quarter. The hearing officer made his determination

based upon the plain meaning of the 1989 Act and a correct application of our prior decisions.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**JAVIER GARZA, WLI MANAGER  
201 WEST 7TH STREET, ASH 414  
AUSTIN, TEXAS 78701-2981.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Edward Vilano  
Appeals Judge