

APPEAL NO. 021223
FILED JULY 8, 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 was held on April 24, 2002. The hearing officer resolved the sole disputed issue by deciding that appellant's (claimant) average weekly wage (AWW) was \$551.11. Claimant appealed, asserting that her \$60.00 per diem should have been included in the calculation of her AWW. The file does not contain a response from respondent (carrier).

DECISION

We reverse and render.

The hearing officer erred in determining that claimant's AWW was \$551.11, as he should have included claimant's \$60.00 per diem in the calculation of her AWW. Claimant testified that she used her per diem to "pay her bills." A written contract refers to the per diem as a payment, "to offset your living expenses, when 50 miles or more from your permanent residence." A representative from her employer said the per diem was to reimburse claimant for travel expenses. However, claimant received the per diem whether or not she was working out of town. The per diem was a portion of claimant's remuneration for her duties, despite her living arrangements, location, or need for travel reimbursement. The parties stipulated that, if the per diem were not included, her AWW would be \$551.11. The parties also stipulated that if the per diem were included in the AWW, it would be \$844.30.

In this case, the evidence did not show that claimant was reimbursed for actual travel-related expenses, such as meals or lodging. Instead, the per diem was paid whether or not claimant traveled for her work. Claimant did not turn in receipts in order to receive the per diem and she did not have to account for the way she spent the money. Therefore, we conclude that the hearing officer erred in failing to include the per diem in the AWW calculation. See Section 401.011(43); Texas Workers' Compensation Commission Appeal No. 012702, decided December 10, 2001. See *also American Surety Co. of New York v. Underwood*, 74 S.W.2d 551 (Tex. Civ. App.-Waco 1934, writ ref'd); Texas Workers' Compensation Commission Appeal No. 931152, decided February 4, 1994.

We reverse the hearing officer's decision and render a decision that the \$60.00 per diem payment for food and lodging is included in the claimant's AWW and that her AWW is \$844.30.

The true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge