

APPEAL NO. 021400
FILED JULY 24, 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 May 9, 2002. He determined that the respondent (claimant) should not have her income benefits reduced to recoup an overpayment resulting from a miscalculation error by the appellant (carrier). The carrier appeals, asserting that the claimant has had "unjust enrichment." There is no response from the claimant.

DECISION

We affirm the hearing officer's decision.

A cursory review of the facts indicates that the claimant has not been "unjustly" enriched. The Dispute Resolution Information System notes in evidence show that the Texas Workers' Compensation Commission (Commission) show that it used an average weekly wage (AWW) in computing supplemental income benefits (SIBs) for the first quarter that was more than had been used for paying income benefits to that point. When the claimant received a smaller check, she contacted the Commission to question it and was told that her correct AWW was lower than the Commission had used. The claimant also had contact with the adjuster, however, who agreed that the figures of the Commission were correct. As the claimant testified, and the carrier did not refute, "everyone agreed" that the higher AWW amount was the correct one and the carrier issued a check for the amount of all underpaid income benefits.

Apparently, the carrier ascertained in March 2002 that the original AWW figure was the correct one all along, and the carrier sought to recoup the overpayment from future SIBs. The hearing officer has declined to allow this, and, in our opinion, properly so.

There is no statutory authority for recouping overpayments. The hearing officer has cited an Appeals Panel decision, Texas Workers' Compensation Commission Appeal No. 990853, decided June 7, 1999, that is directly in point. When errors in payment result from adjusting errors and/or Commission errors, such are more to be regarded as costs of doing business rather than "unjust enrichment" when the claimant relies upon the expertise of those who are primarily responsible for the computation of the AWW. The facts for equitable relief do not apply under the facts of this case.

We affirm the decision and order of the hearing officer.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

CONCUR IN THE RESULT:

Robert W. Potts
Appeals Judge