

APPEAL NO. 023037  
FILED JANUARY 16, 2003

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 October 30, 2002. The hearing officer determined that the respondent's (claimant) receipt of severance pay from her employer does not constitute post-injury earnings or salary continuation for the purpose of calculating temporary income benefits (TIBs), that the employer's payment of severance pay to the claimant does not constitute the payment of income benefits under Section 408.003, and that, therefore, the employer is not entitled to reimbursement from the appellant (carrier) for payment of severance pay. The carrier appealed and the claimant responded, urging affirmance.

DECISION

Affirmed.

On appeal, the carrier asserts that it did not receive a fair and impartial hearing due to hearing officer bias. Nothing in our review of the record indicates that the hearing officer held a bias for or against either party. Additionally, we have reviewed Texas Workers' Compensation Commission Appeal No. 941073, decided September 26, 1994, and Texas Workers' Compensation Commission Appeal No. 941210, decided October 17, 1994, which the carrier asserted that the hearing officer disregarded, and conclude that neither decision is supportive of the carrier's position in this case. Both of those decisions noted that severance pay did not constitute wages or weekly earnings because the claimant had performed no personal services for the employer, and indeed, the employment relationship had ended.

The Appeals Panel has long held that severance pay does not constitute wages or weekly earnings after the injury such that the carrier could reduce the claimant's TIBs as a result of her receiving such pay. See, for example, Texas Workers' Compensation Commission Appeal No. 93404, decided July 8, 1993; and Texas Workers' Compensation Commission Appeal No. 012361, decided November 19, 2001. The severance pay was paid because the plant closed. The severance pay was not monies paid by the employer to compensate the injured employee for wages lost as a result of a compensable injury. Thus, the severance pay was not salary continuation as defined by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.1(1) (Rule 129.1(1)). Since the severance pay did not meet the definition of salary continuation under Rule 129.1(1), it was not post-injury earnings under Rule 129.2(c)(6). The carrier's argument that the severance pay is income benefits under Section 408.003(a) is not well taken as the carrier had initiated the payment of income benefits for the compensable injury, not the employer. In addition, the employer was not initiating benefits for the compensable injury when it paid the severance pay, but rather was paying the claimant based on her years of service with the employer when the plant closed. See Rule 126.13 and Section 401.011(5).

With regard to the carrier's challenge to the Texas Workers' Compensation Commission's (Commission) rule making authority and to various Commission's rules, the Appeals Panel has previously held that, it does not have the authority to decide the validity of Commission rules, that administrative rules are presumed to be valid, and that the courts are the proper forum for deciding the validity of agency rules. Texas Workers' Compensation Commission Appeal No. 010160, decided March 8, 2001.

The hearing officer's decision and order are affirmed.

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

**LAW OFFICE OF JOHN D. PRINGLE  
807 BRAZOS, SUITE 603  
AUSTIN, TEXAS 78701.**

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Daniel R. Barry  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge