

APPEAL NO. 120800
FILED JUNE 25, 2012

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 27, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the only disputed issue by deciding that the respondent's (claimant) average weekly wage (AWW) is \$1,108.39 for the period of July 20, 2011, through January 31, 2012. The appellant (carrier) appeals the hearing officer's AWW determination. The claimant responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant received \$98.77 per week reimbursement from her employer for college courses she took during the 13 weeks immediately preceding the date of injury. The evidence established that the claimant did not receive the \$98.77 per week from July 20, 2011, through January 31, 2012. The claimant testified at the hearing that she began taking classes September 28, 2010, in health care administration with a specialized degree in international management, and that her job title with the employer was a "quality assurance/change management coordinator." The claimant also testified that her coursework had nothing in common with her job, although in her opinion the coursework may have benefitted the employer because her field of study was health care administration and she worked at a hospital.

The evidence established that the employer offered all employees, including the claimant, tuition reimbursement for any classes taken if the employee maintained a certain grade point average. The claimant testified that to be reimbursed for tuition, she obtained a form from the human resources department for director approval of selected courses, and the employer reimbursed her based off the summary balance detail sheet from the school the claimant attended.

The hearing officer stated in the Background Information section of the decision that the "[c]laimant met her burden of proof in that the tuition reimbursement constitutes an 'advantage that can be estimated in money that the employee receives from the employer as part of the employee's remuneration.'" The hearing officer found the weekly tuition reimbursement of \$98.77 constitutes wages for the period of July 20, 2011, through January 31, 2012, and determined the claimant's AWW was \$1,108.39 for the period of July 20, 2011, through January 31, 2012.

The carrier argues that Section 401.011(43) defines wages as all forms of remuneration for a given period to an employee “for personal services,” and that the claimant failed to establish how tuition reimbursement paid by the employer was remuneration given in exchange for personal services. The claimant contends the employer offered a benefit to the claimant by reimbursing her for attending classes in any field she chose whether or not said classes were related to her employment.

Section 401.011(43) states:

‘[w]ages’ includes all forms of remuneration payable for a given period to an employee for personal services. The term includes the market value of board, lodging, laundry, fuel, and any other advantage that can be estimated in money that the employee receives from the employer as part of the employee’s remuneration.

The claimant argued that the employer’s tuition reimbursement was an economic benefit to her that provided an advantage to better herself through further education. The hearing officer noted in the Background Information that the tuition reimbursement constituted an advantage that can be estimated in money that the employee receives from the employer as part of the employee’s remuneration, and found the weekly tuition reimbursement of \$98.77 constitutes wages for the period of July 20, 2011, through January 31, 2012. Whether or not an employer’s tuition reimbursement constitutes an advantage that can be estimated in money that the employee receives from the employer as part of the employee’s remuneration is a question of fact for the hearing officer to determine on a case by case basis. There is sufficient evidence to support the hearing officer’s determination.

Accordingly, we affirm the hearing officer’s determination that the claimant’s AWW is \$1,108.39 for the period of July 20, 2011, through January 31, 2012. We note that the claimant did not receive the tuition reimbursement during July 20, 2011, through January 31, 2012. Had the claimant actually received the payment during this period, those payments would have constituted post-injury earnings.

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

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge