

APPEAL NO. 140981
FILED JULY 1, 2014

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 28, 2014, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the respondent (carrier) is entitled to reduce the appellant's (claimant) impairment income benefits (IIBs) to recoup the previous overpayment of \$2,699.48.¹ The claimant appealed, disputing the hearing officer's determination that the carrier is entitled to reduce IIBs to recoup the previous overpayment of \$2,699.48. The claimant contends that the carrier did not meet his burden to prove that an overpayment exists and violated 28 TEX. ADMIN. CODE § 126.16 (Rule 126.16). The carrier responded, urging affirmance of the disputed determination.

DECISION

Reversed and remanded.

The parties stipulated that on [date of injury], the claimant sustained a compensable injury. The evidence reflects that the carrier initially made a reasonable assessment of the claimant's average weekly wage (AWW) and began the payment of benefits. Subsequently, an Employer's Wage Statement (DWC-3) was received by the carrier and the AWW was recalculated at a lower amount than that initially assessed. Additionally, in evidence was a Benefit Dispute Agreement (DWC-24) dated November 13, 2013, in which the parties agreed that the AWW was \$735.86. The carrier alleges that it has overpaid the claimant benefits based on a recalculation of the AWW. It is undisputed that deductions were made from the claimant's benefits for attorney's fees, child support, and repayment of an approved advance order.

Rule 126.16(b)(1) provides in part that if an insurance carrier determines that it has overpaid income benefits to an injured employee, the insurance carrier may recoup the overpayment from future income benefit payments as follows: the insurance carrier must notify the injured employee in writing that it will begin withholding benefits to recoup an overpayment. The notice must also include the reason for the overpayment; the amount of the overpayment to be recouped from future income benefit payments; the date recoupment will begin; and relevant documentation that supports the insurance

¹ We note that the issue initially before the hearing officer was: Is the carrier entitled to reduce the claimant's IIBs to recoup the previous overpayment of \$2,130.15? The hearing officer revised the issue to reflect a different dollar amount, \$2,699.48, because she determined that amount was actually litigated.

carrier's determination of an overpayment, such as a wage statement or a supplemental report of injury.

In Finding of Fact No. 5, the hearing officer found that the claimant was paid \$18,320.69 in benefits when only \$15,621.21 was owed in benefits resulting in an overpayment of \$2,699.48. In evidence is a Notice of Disputed Issue(s) and Refusal to Pay Benefits (PLN-11) dated November 17, 2012. The PLN-11 states the carrier has identified an overpayment in benefits in the amount of \$2,699.48 and identified the amount of benefits owed to date as \$15,621.21 and the amount actually paid as \$18,320.69. The amounts included in the PLN-11 dated November 17, 2012, are not based on the AWW agreed to by the parties because the agreement of the AWW was not reached until November 13, 2013. The hearing officer did not consider the DWC-24 dated November 13, 2013, entered into by the parties regarding the AWW to determine the disputed recoupment issue. Accordingly, we reverse the hearing officer's determination that the carrier is entitled to reduce the claimant's IIBs to recoup the previous overpayment of \$2,699.48 and remand this issue to the hearing officer for further action consistent with this decision.

On remand the hearing officer is to make a finding of the AWW that should be used to determine the overpayment made by the carrier, if any, and identify the calculations and relevant time periods utilized to arrive at the amount determined to be overpaid, if any.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
d/b/a CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge