

APPEAL NO. 051352
FILED JULY 18, 2005

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 5, 2005. The hearing officer resolved the disputed issues by deciding that attorney's fees in an amount not to exceed 25% of \$295.32 per week are to be awarded to the appellant's (claimant) attorney as long as income benefits are owed and until the total amount of attorney's fees are paid; that the court-ordered child support is to be paid by the respondent (carrier) to the Child Support Division of the Attorney General's Office in a weekly amount equal to one-half of what remains after attorney's fees are paid from the claimant's income benefits until child support obligations are discharged; and that "[b]enefits withheld in an amount in excess of the amount established in Conclusion of Law No. 4 are to be repaid to the claimant by the carrier." The claimant appealed, disputing the determination that court-ordered child support is to be paid by the carrier in an amount equal to one-half of what remains after attorney fees are paid from the claimant's income benefits. The carrier responded, urging affirmance of the disputed determination.

DECISION

The hearing officer's decision and order is void due to lack of subject matter jurisdiction.

The amount of the claimant's average weekly wage was undisputed. Further, the amount of the weekly temporary income benefits (TIBs) rate for the claimant was also undisputed. The evidence reflected that the claimant was under four separate court orders to pay child support. The claimant also owed attorney's fees to his attorney for legal representation received in the workers' compensation matter.

Section 158.009 of the Texas Family Code provides that an order or writ of withholding of income for child support shall direct any employer of the obligor to withhold from the obligor's disposable earnings the amount specified up to a maximum amount of 50% of the obligor's disposable earnings. The parties disagreed over the amount of TIBs that should be distributed to the claimant after amounts had been withheld for child support and attorney's fees. It was the claimant's position that the claimant should receive one-half of the total TIBs amount prior to any deduction for attorney's fees. The carrier contended that attorney's fees should be deducted from TIBs and then one-half of the TIBs amount remaining should be distributed to the claimant and one-half withheld for payment of child support.

In the Background Information portion of the decision the hearing officer referenced Section 408.203 which establishes a priority for allowable liens against income benefits. The first priority is attorney's fees followed by court-ordered child support. The hearing officer noted that this conflicts with Section 158.0051(b) of the

Texas Family Code which provides that an order for attorney's fees and costs resulting from an action to enforce child support is subordinate to an order or writ of withholding for child support and is subject to the maximum amount allowed to be withheld under Section 158.009. Section 158.008 of the Texas Family Code provides a direct conflict with Section 408.203 of the Texas Labor Code. Section 158.008 provides that an order or writ of withholding has priority over any garnishment, attachment, execution, or other assignment or order affecting disposable earnings. The Texas Family Code in Section 101.010 defines disposable earnings. The claimant argues that the legal question presented in this case is "what are disposable earnings." As previously noted, the Texas Family Code limits the amount to be withheld for child support to 50% of the obligor's disposable earnings.

The parties are in effect arguing over how to apply the order of withholding for child support. This is not an area that has been committed to the Texas Workers' Compensation Commission's (Commission) discretion by statute. Subject matter jurisdiction is essential to the authority of a tribunal to decide a case and cannot be conferred by consent, waiver, or estoppel at any stage of a proceeding. See Tex. Ass'n. of Bus. v. Tex. Air Control Bd., 852 S.W.2d 440, 443, 36 Tex. Sup. Ct. J. 607 (Tex. 1993). Subject matter jurisdiction is never presumed. Cont'l Coffee Prods. Co. v. Cazarez, 937 S.W.2d 444, 448, 40 Tex. Sup. Ct. J. 172 (Tex. 1996). Administrative agencies are created by statute and have no inherent authority. Pub. Util. Comm'n v. GTE-Southwest, Inc., 901 S.W.2d 401, 406, 38 Tex. Sup. Ct. J. 485 (Tex. 1995). Agencies may only exercise those specific powers that the law confers in clear and express language; however, an agency may also exercise powers necessarily implied from the statutory authority granted or the duties expressly given or imposed. Id. at 407. The "jurisdiction" of an administrative agency means the power to hear and determine a matter committed to the agency's discretion by statute. Beaver Express Service, Inc. v. Railroad Commission of Texas, 727 S.W.2d 768 (Tex. App.-Austin 1987, writ denied). Section 155.001 of the Texas Family Code provides that except for the stated exceptions, a court acquires, continuing, exclusive jurisdiction over the matters provided for in a suit affecting a parent-child relationship, which include the order for child support, in connection with a child on the rendition of a final order. The stated exceptions include a voluntary or involuntary dismissal of a suit affecting parent-child relationship; a suit to determine parentage; a final order of adoption; and no other court has jurisdiction with regard to that child except as provided by Chapter 262 of the Family Code. The various district courts involved in this matter, have already exercised jurisdiction by ordering child support to be paid by the claimant. Those courts under Section 155.001 retain continuing, exclusive jurisdiction. The Commission does not have jurisdiction to interpret the various provisions of the Family Code or to determine the amount of the disposable earnings of the claimant subject to the withholding orders. This is a matter for the appropriate courts to decide.

Because the Commission lacks jurisdiction the hearing officer's determinations that attorney's fees in an amount not to exceed 25% of \$295.32 per week are to be awarded to the claimant's attorney as long as income benefits are owed and until the total amount of attorney's fees are paid; that the court-ordered child support is to be

paid by the carrier to the Child Support Division of the Attorney General's Office in a weekly amount equal to one-half of what remains after attorney's fees are paid from the claimant's income benefits until child support obligations are discharged; and that the benefits withheld in an amount in excess of the amount established in Conclusion of Law No. 4 are to be repaid to the claimant by the carrier are void.

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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge