

ADVISORY NO. 64

TO: ATTORNEYS & CLIENTS

RE: APPEALS PANEL DECISION NO. 92556 ISSUED DECEMBER 3, 1992

For those of you who have not heard of an important decision from the appeals panel on one of Flahive, Ogden & Latson cases, attached is a summary of that decision. It is important from the standpoint that it allows a "redesignation" of income benefits. It is not a recoupment as such. Nonetheless, it allows a carrier to redesignate income benefits originally paid as temporary income benefits to impairment income benefits under the appropriate circumstances. This decision does not overrule No. 92291. It distinguishes No. 92291 in that the carrier had mistakenly calculated benefits in No. 92291 and then sought to recoup the resulting overpayment by reducing future income benefits to be paid. That recoupment is not allowed and would not be allowed under No. 92556.

FLAHIVE, OGDEN & LATSON

RECOUPMENT
REDESIGNATION OF INCOME BENEFITS
INCOME BENEFITS
CREDIT

NO. 92556 (AUSTIN)

Facts: The claimant was injured on July 9, 1991. He began treating with a chiropractor, Dr. A. The carrier and the claimant's attorney agreed to an independent medical examination with Dr. P. Dr. P, in a report dated December 31, 1991, stated that he felt the claimant had reached maximum medical improvement and could be released to his pre-injury work status no later than 30 days from that date. Dr. A had indicated an intention to release the claimant to return to work on January 31, 1992. The claimant disagreed with this opinion and switched treating doctor to Dr. T. Dr. T certified that the claimant had reached maximum medical improvement on May 12, 1992. Dr. R was designated by the benefit review officer to determine the date of MMI and impairment. In a TWCC-69, Dr. R. certified that the claimant reached MMI on December 31, 1991, with a 5% whole body impairment rating.

Based on the above, the carrier had paid 44 weeks of income benefits designated as impairment income benefits for the period from July 10, 1991, to May 12, 1992. The hearing officer determined that the claimant was entitled to TIB's from July 10, 1991, through December 31, 1991, plus an additional 15 weeks of impairment income benefits. The hearing officer further specifically found, citing Texas Workers' Compensation Commission Appeal No. 92291, that the carrier could not offset as a credit against IIB's the excess TIB's paid by the carrier from January 1, 1992, to May 12, 1992. The carrier appeals requesting that No. 92291 be reversed or at least distinguished from the case at hand.

Holding: Reversed and rendered. The appeals panel distinguishes Appeal No. 92291 from the instant case. They point out that No. 92291 dealt with circumstances where the carrier had miscalculated the computation of TIB's and then sought to recoup the overpayment resulting from the miscalculation from future benefits to be paid to the claimant through a reduction in the applicable rate. In the case at hand, there was, "...no mistake or issue as to the amount of the payments..., nor was there an effort to recoup or take back payments already made to the claimant or to reduce the claimant's ongoing income benefits below those appropriate under the Act". They point out that the definition section of the Act defines "income benefits" and does not provide a separate definition for temporary income benefits or impairment income benefits. The carrier is merely required to pay income benefits as required by Section 4.23(b) and 4.26(c) as interpreted by Rule 130.8. In the case at hand, the claimant was entitled under the decision to temporary income benefits for the period from July 10, 1991, through December 31, 1991, and 15 weeks of impairment income benefits thereafter. In other words, the carrier is entitled to redesignate the income benefits paid after December 31, 1991, and originally designated as temporary income benefits to impairment income benefits.