

ADVISORY NO. 151

TOPIC: SALARY CONTINUATION PLANS AND WAGES

The Appeals Panel has issued a new opinion regarding salary continuation plans, and further clarified what is meant by "wages." Appeal No. 941073

In this case, the claimant suffered a repetitive trauma injury to her thumb and was taken off work. During the period in question, the claimant did not perform any work for the employer. However, the claimant received her full salary paid by the employer pursuant to its company program. The employer explained that it does not have a sick leave policy as such, but at the manager's discretion, an employee is granted full pay during the period of time that the employee is out due to illness or injury, whether or not it is job related.

The Appeals Panel affirmed the Hearing Officer's decision that these payments were not "wages" or "weekly earnings after the injury," as the claimant did not provide any personal services for the employer and remained in an off-duty status.

The Hearing Officer ordered: "Temporary income benefits are to be paid by the carrier." The Panel reversed the Hearing Officer, stating that the salary continuation was provided by the employer for the same purposes as TIBS are intended to achieve; that is, "to assist the employee with respect to a 'shortfall,' so to speak, in the employee's wages due to a compensable injury (i.e., to replace those lost wages) during rehabilitation or until the employee reaches maximum medical improvement." *Citing* 1 MONTFORD, BARBER & DUNCAN, A GUIDE TO WORKERS' COMPENSATION REFORM, Section 4.23. As more than replacement of lost wages was not contemplated by the 1989 Act, the Hearing Officer's decision awarding TIBS to the claimant for the time period in question was reformed. The Panel reformed the order to read as follows:

Carrier is ordered to pay medical benefits to the claimant in accordance with this decision and the Texas Workers' Compensation Act and its rules. The carrier shall reimburse the employer for the amount of benefits paid by the employer to which the claimant was determined to be entitled, if the employer demonstrates compliance with Section 408.003.

Therefore, although the carrier still owes the amount that would otherwise have been paid to the claimant as TIBS, it is the employer that will be reimbursed, and the claimant will not get double recovery.

One important result o

f this decision is that the eighth day of disability may be occur earlier than previously thought. This would have the effect of moving the date of statutory MMI to an earlier date. The cases that would be affected are the "no-lost time" cases where the claimant was actually off work, yet the employer continued to pay the claimant's salary.

Another potentially significant result is that we may be able to use this to excuse administrative violations when the employer continued salary, and the carrier failed to pay TIBS. We will want to argue that an employer may refuse reimbursement, thus "excusing" our obligation to pay benefits.

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