

ADVISORY NO. 202

**TOPIC: MINIMUM COMPENSATION RATE DOES NOT APPLY TO
 "HIGH WAGE" CLAIMANTS**

The Appeals Panel has announced an extremely important decision about which you should be immediately aware. We have believed that the minimum compensation rate applied to payment of all TIBs. Where an employee returned to work and was entitled to be paid partial TIBs, and where those calculated in an amount less than the minimum rate, we have recommended that carriers pay the minimum rate, even if this resulted in a “windfall” to the claimant. The statute seems to compel this.

The Appeals Panel has reached a different result in **Appeal No. 960998**. That was a partial TIBs rate case where a claimant sustained a compensable injury but did not lose more than one day from work. However, because of medical restrictions he was not able to work overtime or any Saturdays. Also, his hourly rate was slightly reduced. This resulted in a net reduction in the claimant's post-injury earnings.

A dispute arose regarding the calculation of Temporary Income Benefits. The claimant argued that he was entitled to the minimum compensation rate of \$71.00 per week due to his reduction in earnings. The carrier responded by noting that if the claimant were to receive the minimum compensation rate, he would earn more after his injury than before, creating a windfall. The carrier insisted that TIBS should be paid under the straight 70% formula with no minimum.

Following a CCH, the Hearing Officer ordered the carrier to pay TIBS at the minimum rate of \$71.00 per week. The Appeals Panel reversed. The AP referred to Section 408.103, which provides that the claimant is entitled to 70% of the amount computed by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage. This rule applies to the claimant without reference to the minimum compensation rate.

The AP did acknowledge the formula provided by the TWCC in Rule 129.2 for calculating TIBs. This Rule implements the statutory minimum. However, the AP held that this Rule only applies to "low wage earners" (i.e., those who earn less than \$8.50 per hour). For high wage earners, there is no minimum.

Comment:

The AP did not consider whether the minimum compensation rate applies to low wage earners beyond the first 26 weeks of a claim. FO&L notes that Rule 129.2(a) (governing the TIBS calculation) only applies to the first 26 weeks of benefits. Thereafter, according to Rule

129.2(b), benefits are "paid at the rate of 70% of the difference between the average weekly wage and the employee's weekly earnings after the injury." There is no reference to the minimum compensation rate. Therefore, a fair reading of Appeal No. 960998 and Rule 129.2 would be that there is no minimum comp. rate after the first 26 weeks for any claimant.