

SUPREME COURT OF LOUISIANA

No. 01-C-0924

SYLVIA J. SMITH

Versus

GAYLORD CONTAINER CORPORATION ET AL

PER CURIAM*

This application is granted in part.

The court of appeal reversed the reinstatement of temporary total benefits and awarded plaintiff supplemental earnings benefits based on the conclusion that plaintiff could only earn minimum wages, thereby remanding the matter to the hearing officer to determine plaintiff's average weekly wage before her injury.

Because the issue before the hearing officer was whether temporary total disability benefits were improperly terminated, supplemental earnings benefits were never considered by that court. Therefore, on remand the parties should be allowed to offer whatever evidence they deem appropriate to support or rebut the award of supplemental earnings benefits. See La. Rev. Stat. 23:1221(3)(c)(i). For that reason, we grant this application, vacate the court of appeal's award of supplemental earnings benefits, and remand to the trial court for a determination of the proper amount due.

In all other respects, the application is denied.

*Retired Judge Robert L. Lobrano, assigned as *Pro Tempore*, participating in the decision; Justice Philip C. Ciaccio, assigned as Justice *Pro Tempore*, sitting for Justice Bernette J. Johnson.