APPEAL NO. 980277
FILED MARCH 30, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was commenced on December 17, 1997, in (City), Texas, with the record closing on January 20, 1998. (Hearing officer) presided as hearing officer. The issue at the CCH was whether the claimant was entitled to supplemental income benefits (SIBS) for the 14th compensable quarter from September 22 through December 21, 1997. The hearing officer determined that during the filing period for the 14th compensable quarter the respondent (claimant herein) had no ability to work and was entitled to SIBS for the 14th compensable quarter. The appellant (carrier herein) files a request for review arguing that the hearing officer erred in finding that during the filing period for the 14th compensable quarter the claimant did not return to work as a direct result of his impairment. The carrier argues that the evidence establishes that the claimant was not able to work during this period as a result of an intervening injury and therefore the hearing officer erred in finding that the claimant was eligible for SIBS during the 14th compensable quarter. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer discusses the evidence in this case in some detail and we adopt his rendition of the facts. We will only briefly touch on the facts directly germane to the appeal. These include the fact that the parties stipulated that the claimant suffered a compensable injury on _____, which included his face, neck and head; that the claimant attained maximum medical improvement (MMI) on May 2, 1993, with an impairment rating (IR) of 20%; that the claimant had not elected to commute a portion of his impairment income benefits; that the filing period for the 14th compensable quarter of SIBS was from June 18 through September 21, 1997; and that the 14th compensable quarter for SIBS was from September 22 through December 21, 1997. The claimant returned to work after his compensable injury as a security guard and suffered an injury on that job in 1995. The claimant testified that he had difficulty performing his duties as a security guard prior to the 1995 injury because of the effects of the compensable injury of _____.

There is medical evidence that prior to the 1995 injury the claimant was treated for psychological problems due to the _____, injury. Also Dr. E, M.D., a psychiatrist and neurologist, stated in part as follows in a December 7, 1995, letter:

> I may add that it is my opinion as stated in the medical hospital records that were previously sent, that the problems for which he is currently treated are a relapse of his original physical and emotional problems caused by the injury at work sustained on _____.

Dr. E also stated in part as follows in a letter dated April 22, 1997:

> [The claimant] had an original injury in _____ while working at (employer), then with the treatment and rehabilitation, he was able to work as a security guard from May 1994 to (date of 1995 injury), but barely making it and showing symptoms of mental and emotional disturbance and on (1995 injury), after an incident at work, he became again extremely agitated and suicidal.

The claimant testified he has been unable to work due to his condition and the medication he is taking. Dr. K, M.D., the claimant's treating doctor states in part as follows in an October 28, 1997, letter to the carrier:

> The problem he is having with the neck and shoulder are not what is keeping him from work. It is the large amount of medication he currently requires for the psychiatric problems.

It was undisputed that the claimant did not seek employment during the filing period for the 14th compensable quarter.

The 1995 injury resulted in litigation in which the claimant has sued the person he alleges was responsible for that injury. The carrier put into evidence the claimant's petition in that lawsuit as well as his answers to interrogatories and oral deposition. The carrier contends that the hearing officer erred in light of the evidence in concluding that the claimant was unemployed during the filing period as a direct result of his impairment entitling him to SIBS benefits. The carrier argues that the evidence established that the intervening 1995 injury was the cause of the claimant's inability to work during the filing period of the 14th compensable quarter. As the hearing officer noted in his decision, we considered essentially the same argument by the carrier regarding the claimant's eligibility for SIBS for the 13th compensable quarter in Texas Workers' Compensation Appeal No. 972062, decided November 24, 1997. The hearing officer recognized, as do we, that entitlement to each quarter of SIBS is "judged on its own and a determination for a subsequent and determination for a prior quarter is not binding on a determination for a subsequent quarter." Yet we also recognize that the legal doctrines enunciated in our prior decisions constitute *stare decisis* in regard to our subsequent decisions and the legal doctrines we relied upon in Appeal No. 972062 affirming the decision of another hearing officer, that the claimant was entitled to 13th quarter SIBS, are applicable to the present case.

As in Appeal No. 972062 the carrier's appeal hinges on an attack of the determination of the hearing officer that the claimant met the requirements of Section 408.142(a)(2) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.104(a)(1) (Rule 130.104(a)(1)) that his unemployment be a direct result of his impairment from the compensable injury. The carrier argues that evidence of the intervening injury proved otherwise and cites to our decisions in Texas Workers' Compensation Appeal No. 961317, decided August 22, 1996, and in Texas Workers' Compensation Appeal No. 961689, decided October 10, 1996. We distinguished these cases in Appeal No. 972062, *supra*, stating as follows:

> Carrier cites Texas Workers' Compensation Appeal No. 961317, decided August 22, 1996, where the Appeals Panel affirmed a hearing officer's decision that the claimant's unemployment, in that case, was due to a second injury. The Appeals Panel held that the hearing officer was entitled to draw that inference from the evidence, emphasizing that such a determination was within the hearing officer's prerogative to decide. That case certainly does not mandate that we must reverse a hearing officer on the facts before us here. Carrier also cites Texas Workers' Compensation Appeal No. 961689, decided October 10, 1996, where the Appeals Panel reversed and rendered a new decision where the hearing officer erroneously applied the burden of proof that, although claimant did not prove his unemployment was a direct result of his impairment, there was a "presumed . . . direct result of his impairment unless the Carrier can prove that otherwise." As such, that case is inapplicable to the present situation, where the hearing officer did not erroneously apply the burden of proof.

In the present case, the carrier does assert that the hearing officer misplaced the burden of proof. However, our review of the hearing officer's decision is that the hearing officer found that as a matter of fact the evidence failed to establish that the 1995 injury was either a producing cause or the sole cause of the claimant's unemployment during the filing period. Certainly, this is a matter for the hearing officer to consider in making a determination as to SIBS eligibility when the carrier's position is that the intervening injury precluded the compensable injury from being a direct result of the claimant's unemployment. We recognized this when we stated as follows in Appeal No. 972062, *supra*:

> The fact that claimant filed suit against Ms. L for her part in causing his injuries, while probative evidence that the subsequent 1995 incident was an intervening cause, is not necessarily dispositive and still leaves with the finder of fact the responsibility to make a determination whether claimant's unemployment was a direct result of claimant's impairment from the compensable injury. While the hearing officer could have accepted that the intervening injury was the sole cause of claimant's present mental

condition, the hearing officer clearly rejected that theory and accepted that the subsequent 1995 injury aggravated and exacerbated claimant's already fragile mental condition due to the original injury. That claimant merely had an intervening injury and filed a civil suit against a third party does not automatically mean that carrier has no responsibility for the initial injuries. The subsequent injury is probative evidence which the hearing officer can accept or reject as being the direct result of claimant's current total inability to work.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Christopher L. Rhodes
Appeals Judge