

APPEAL NO. 980294
FILED MARCH 30, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 16, 1997, a contested case hearing on remand was held in (City), Texas, with (hearing officer) presiding. The hearing on remand resulted from Texas Workers' Compensation Commission Appeal No. 971709, decided October 20, 1997, which affirmed findings that the carrier had timely contested compensability of respondent's (claimant) seizures and that the claimant was not entitled to supplemental income benefits (SIBS) for the second compensable quarter; it also affirmed with modification that claimant's seizure disorder was aggravated by medication provided for the compensable injury. The hearing officer's finding of entitlement to SIBS for the first quarter was remanded for a determination as to whether the seizure aggravation constituted part of the impairment (whether it was permanent) and if not, for reexamination of the determination as to SIBS for the first quarter. The hearing officer determined that the seizure disorder was not permanent and was not part of the impairment, but still found SIBS entitlement for the first quarter. Appellant (carrier) asserts error in the determination that the compensable injury included an aggravation of the seizure disorder and that the claimant is entitled to SIBS for the first quarter, referring to findings regarding direct result and attempt in good faith to obtain employment. Claimant replied that the decision should be affirmed.

DECISION

We affirm.

The hearing officer provided a summation of the proceedings at the hearing on remand to the two parties. Neither appeals the use of this summary in the appeals process. The hearing officer noted that no new evidence was provided at the hearing on remand, but that both parties argued the issues.

As stated in Appeal No. 971709, *supra*, the determination that the seizure disorder was aggravated by the compensable injury through medication, provided for that injury, was affirmed. It will not now be readdressed although carrier again appeals that determination. The only issues for consideration on remand addressed the determination of entitlement to SIBS for the first quarter and whether the seizure disorder aggravation, found to be compensable, was permanent and therefore part of the impairment. See Texas Workers' Compensation Commission Appeal No. 962006, decided November 20, 1996, and Texas Workers' Compensation Commission Appeal No. 972228, decided December 10, 1997. The hearing officer has found the seizure disorder aggravation not to be permanent so it is not part of the impairment and that determination has not been appealed. It is therefore final. The filing period for the first quarter began in mid-December 1996 and ended on March 11, 1997.

Although the hearing officer made no finding of fact or conclusion of law as to claimant's unemployment for the first quarter being a direct result of the impairment, he did address whether claimant could return to his prior work as an aircraft mechanic. In providing two findings of fact as to returning to work as an aircraft mechanic, an implied finding of fact as to unemployment being a direct result of the impairment may be made.

One of the two findings indicated that claimant could not return to his prior work as a result of impairment of his back, so it is clear that the hearing officer only considered claimant's impairment (the back condition) when he stated that claimant cannot return to his prior work. (The Appeals Panel agrees that the unemployment need only be a direct result of the impairment, but the impairment must be known.) The evidence shows that claimant sustained multiple herniated discs which may be considered a serious injury with lasting effects; with evidence also showing that claimant's prior work as an aircraft mechanic entailed "heavy lifting" and with a required medical examination doctor, Dr. S, testifying that claimant could not lift over 30 pounds (20 pounds frequently), the claimant may be found not to be able to do the work he was doing at the time of the injury--as was found by the hearing officer. See Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996, which said that such facts may support a determination that the unemployment is a direct result of the impairment.

The hearing officer also found that claimant was unable to work during the filing period of the first quarter because of the "distabilized seizure disorder [sic]"; while such seizure disorder was said to coexist with the impairment of the back, the back condition was not said to be a basis for the inability to work; another finding then restated that claimant had no ability to work during the filing period of the first quarter. Although the seizure disorder was not found to be part of the impairment, the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 970593, decided May 15, 1997, did say that medical evidence of a complete inability to work may address "claimant's compensable injury"; this is consistent with Texas Workers' Compensation Commission Appeal No. 960732, decided May 20, 1996, which said that medical evidence must address the physical ability of the claimant "resulting from his compensable injury" in a question of total inability to work. In the case under review, the claimant's seizure disorder aggravation was found to be compensable. In addition, the hearing officer specifically found that the seizure disorder was destabilized during the filing period of the first quarter. (The evidence indicates that while claimant stopped having seizures at the time of the filing period of the first quarter, the seizure disorder was considered to be unstable by Dr. H through February 1997, the majority of the filing period.) With the seizure disorder aggravation being part of the compensable injury and with it affecting the claimant during the filing period, Dr. H's statement that claimant should not do any type of "work duty" through February 1997 provides sufficient support for the determination that claimant had no ability to do any work during the filing period for the first quarter. *Compare* to Texas Workers' Compensation Commission Appeal No. 972589, decided January 27, 1998, which said that when a claimant has some ability to work, the good faith aspect of the job search may also be affected by sickness or disease that is not part of the compensable injury or impairment.

With no ability to work during the filing period of the first quarter because of the compensable injury and with claimant's unemployment being a direct result of the impairment, the determination that claimant was entitled to SIBS for the first quarter is sufficiently supported by the evidence.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge