

APPEAL NO. 990005

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 15, 1998, a contested case hearing (CCH) was held. With respect to the only issue before her, the hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBS) for the 18th compensable quarter and that claimant's unemployment and total inability to work were direct results of his impairment.

Appellant (carrier) appeals many of the hearing officer's factual determinations and the conclusion on the basis that claimant had returned to work after his compensable injury; that he had been involved in an intervening incident/injury; and that claimant's allegations and sworn testimony in a lawsuit filed regarding the intervening event proved that claimant's total inability to work was due to the intervening injury rather than the compensable injury. Carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The file does not contain a response from the claimant.

DECISION

Affirmed.

First, we will note that this case has been before us a number of times on prior quarters of SIBS based on the same facts and with the same legal arguments being made by carrier. See Texas Workers' Compensation Commission Appeal No. 972062, decided November 24, 1997, for the 13th compensable quarter; Texas Workers' Compensation Commission Appeal No. 980277, decided March 30, 1998 (Unpublished), for the 14th compensable quarter; Texas Workers' Compensation Commission Appeal No. 981592, decided August 28, 1998 (Unpublished), for the 16th compensable quarter; and Texas Workers' Compensation Commission Appeal No. 982616, decided December 22, 1998 (Unpublished), for the 17th compensable quarter. The underlying facts of this case were discussed in those decisions. Very briefly, claimant was employed by a construction company in (first date of injury) when he sustained a compensable injury when he was struck in the head, face and neck by a jackhammer. Claimant was treated for a mental injury and depression due to that injury. Claimant received retraining through the Texas Rehabilitation Commission (TRC) as a security guard and, with the assistance of TRC (or employer), was employed by a security guard service. Claimant's wife testified how someone else either assisted claimant or actually took qualifying tests for claimant so he could get his certification as a security guard and to carry a loaded weapon. Claimant was placed as a security guard at a grocery store, at something less than half his preinjury wage, and worked in that position 13 months until (second date of injury) during which time he received good evaluations, apparently based on reports that claimant's wife wrote for him. The testimony was that claimant was unable to read or write after his compensable (first date of injury). The events of (second date of injury) are detailed in Appeal No. 972062, *supra*. Briefly, claimant attempted to detain a suspect, (Ms. L), who was in her car, by holding the doorhandle as she was driving away. There is evidence that claimant

sustained additional shoulder injuries and a worsening of his mental condition. Claimant was subsequently terminated by the security guard service for violating company policy against detaining persons against their will.

The parties stipulated to the compensable (first date of injury) that claimant had a 20% impairment rating (IR), that impairment income benefits were not commuted and that the filing period for the 18th compensable quarter was from September 21 through December 20, 1998. Claimant did not testify at the CCH and the hearing officer noted that he "was out of it and mostly asleep during the [CCH]." Carrier does not seriously contend that claimant, at present, has any ability to work. Rather, carrier's position at the CCH, on appeal and, for that matter, in the prior quarters of SIBS, was that the intervening 1995 injury is the sole cause of claimant's total inability to work during the filing period and that pleadings and interrogatories in a lawsuit claimant filed against the customer he tried to detain in 1995 (Ms. L) proved that claimant's total inability to work was due to the intervening (second date of injury)/incident.

First, we would note that claimant's return to work with the security guard service was at a minimum wage (the preinjury wage had been \$10.00 an hour) through the services of the TRC or (employer); and, according to claimant's wife, claimant's abilities were at that time very suspect, with either claimant's wife or someone else doing claimant's paperwork and tests for him. Rather clearly, even in 1994, when claimant began working for the security guard service, he was "underemployed" for SIBS purposes as a direct result of the compensable injury. As we noted in Appeal No. 981592, *supra*:

He was occupying a job in 1995 that represented the best he was able to get given all the effects of his 1991 injury. Nothing in the 1995 injury caused these effects to be obliterated, nor did the second injury "intervene" to supercede those effects.

Whether claimant's current total inability to work was a direct result of claimant's impairment from the 1991 injury is largely a factual determination for the hearing officer to resolve. We also note that not even carrier asserts that claimant could now, or in 1995, return to his preinjury construction employment.

Carrier contends that evidence in the lawsuit against Ms. L is evidence of an intervening superceding event. We previously addressed that argument in Appeal No. 981592, stating:

The petition for the lawsuit contends physical injuries are "a direct result" (emphasis added) of the actions of the person he attempted to detain. The petition is signed by claimant's attorney and is not sworn to by him. We observe that the matters set forth in the litigation papers in evidence do not, as the carrier asserts, represent a contradiction to his claim for SIBS. As the hearing officer pointed out, there was a lack of contradictory medical evidence to prove that the 1991 injury had been for all intents and purposes, superceded by the effects of the 1995 injury.

Carrier cites Texas Workers' Compensation Commission Appeal No. 961122, decided July 29, 1996, for the proposition that since claimant's IR did not include any rating for "psychological impairment," claimant's considerable psychological problems cannot now be considered in assessing claimant's total inability to work. First, we have retreated from the position announced in Appeal No. 961122 in Texas Workers' Compensation Commission Appeal No. 961522, decided September 23, 1996, Texas Workers' Compensation Commission Appeal No. 962002, decided November 25, 1996, and others. Carrier also asserts that the position taken in Appeal No. 961122, *supra*, was upheld in a district court in County and that ruling should or must be followed here. We addressed that argument in Appeal No. 982616, *supra*, stating:

Carrier cites a district court summary judgment order from a case that did not involve claimant and apparently contends that the Appeals Panel is bound by this order. The movant in that unrelated case moved for summary judgment based on the direct result criterion. The decision of a state district court has no effect "beyond its factual context" and does not bind the Texas Workers' Compensation Commission (Commission) as a matter of stare decisis in the Commission's interpretation of the 1989 Act. The Appeals Panel is not bound by a district court opinion in a case involving other parties and in which the Commission did not participate. Texas Workers' Compensation Commission Appeal No. 94994, decided September 9, 1994.

We will also note that while each quarter is judged on its own merits, we have previously addressed these same facts and carrier's same arguments in the four previously cited Appeals Panel decisions, and affirmed decisions favorable to the claimant in prior quarters of SIBS.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge