

APPEAL NO. 000441

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 18, 2000, and January 31, 2000, a hearing was held. The hearing officer determined that respondent (claimant) is entitled to supplemental income benefits (SIBS) for the first compensable quarter. Appellant (self-insured) asserts that it was error to find that claimant's impairment rating (IR) is 18%, that it did not stipulate to that fact; self-insured also asserts that there is no evidence that claimant was a full-time student; finally, it says that good faith was not shown because it was based in part on student status and claimant did not look for work each week of the qualifying period. Claimant chose not to respond to the appeal.

DECISION

Reversed and remanded.

Claimant worked for the self-insured in the sheriff's department. His testimony was not specific as to his injuries but he did testify that after a leg gave way while running, resulting in a fall, his ankle, knee, shoulder and back were thereafter treated. Prior to the fall on _____, he had had one knee replacement operation; after the fall he had another knee replacement operation.

The parties stipulated that the first compensable quarter began on October 9, 1999, and that no benefits were commuted--along with employment, insurance and venue matters. Self-insured said in regard to a stipulation as to IR that it could not stipulate that 18% is the correct IR because it had a lawsuit pending addressing that question. The hearing officer stated that there would be no stipulation on IR, that he would make a finding of fact as to IR, and that the number of stipulations would be five.

Later in the proceeding, there was a continuance until January 31, 2000; when the proceeding again went on the record, the hearing officer again referred to the fact that there had been no stipulation on IR because self-insured was in litigation on this point. The remainder of the record did not disclose any change in the status of the stipulations, which did not include IR. The hearing officer did admit a copy of the designated doctor's report, which found 18%, as a hearing officer's exhibit. In addition to the inclusion, in error, of a stipulation that the IR was 18%, there was no finding of fact addressing the IR. With no determination as to the IR, the basic requirements of Section 408.142 have not been met, and a determination as to SIBS cannot be made.

With no stipulation and no finding of fact addressing IR, the case is remanded for a determination of IR. Until there is such a determination, other points on appeal, such as whether claimant was a full-time student, will not be addressed.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Joe Sebesta
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge