APPEAL NO. 001119

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 000091, decided March 1, 2000, we reversed and remanded the decision of the hearing officer awarding 10th quarter supplemental income benefits (SIBs) for further specific findings regarding the regulatory requirements for establishing an inability to work in any capacity. The hearing officer, issued a decision and order on remand in which she again found that the respondent (claimant) was unable to work in any capacity during the qualifying period and was entitled to 10th quarter SIBs. The appellant (carrier) appeals this determination, urging factual insufficiency and error as a matter of law. The claimant replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Reversed and rendered.

Background facts and applicable law are contained in Appeal No. 000091. Briefly, the claimant's compensable injury included two subdural hematomas and left-sided weakness, caused when a truck door hit him in the head. He also has diabetes and is legally blind, conditions which are not work related. The claimant made no attempts to obtain employment during the 10th quarter qualifying period. The purpose of the remand was for the hearing officer to make findings of fact in regard to each element of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(3) on which a further finding that he does or does not have an ability to work could be based.[1]

The hearing officer found that the various reports of Dr. R, the treating doctor, constituted "narrative reports . . . which, read together, specifically explain how [the claimant's] injury of April 11, 1994, caused him to be totally unable to work." The "narrative report" need not be one report, but can consist of numerous reports, which in the aggregate explain how the injury causes a total inability to work. *See* Texas Workers' Compensation Commission Appeal No. 000227, decided March 21, 2000. We also point out that under Rule 130.102(d)(3), the inability to work must be caused by the compensable injury. *See* Texas Workers' Compensation Commission Appeal No. 991616, decided September 15, 1999.

The narratives relied on by the claimant to establish an inability to work consist of a series of reports and work excuses of Dr. R, who treated only the compensable injury. In a late 1994 report, Dr. R stated that the claimant's left-sided weakness had improved and the prognosis was "good at long range." Subsequent reports, however, contain a prognosis of "guarded for function" and typically reflect chief complaints of left-sided weakness in the extremities with difficulty of coordination and balance that requires use of

[1]Rule 130.102(d)(3) has been redesignated Rule 130.102(d)(4) without substantive change.

a cane. Also in evidence are a series of work-status statements which simply advise the claimant to "remain at home on conservative management (no work) . . . permanently." In its appeal, the carrier argues that these statements are at best conclusory in nature and do not specifically explain how the compensable injury renders the claimant unable to work. We agree. The reports of Dr. R, Specific and Subsequent Medical Reports (TWCC-64), do not in themselves address the claimant's ability to work, with one possible exception. The exception is Dr. R's report of February 11, 1997, in which Dr. R refers to a May 28, 1996, report of Dr. S as saying that the claimant "would not be able to return to any type of occupation." That report of Dr. S, also in evidence, concluded that the claimant could not return to his prior work "or any other heavy work or work that requires rapid, either upper or lower extremity, movements on his left side. He might be able to tolerate a very light duty job for a limited number of hours, but I think that is probably going to be the limit of what he can tolerate. Further complicating problems are his diabetic retinopathy which will limit his ability to seek employment further." From this, we are unwilling to conclude that Dr. R's description of Dr. S's report is accurate or supportive of a possible conclusion by Dr. R that the claimant is unable to work in any capacity. There remains only the work-status statements as evidence of an inability to work. These contain no more than a conclusion that the claimant is not to work and is to remain at home. No rationale is provided in any of them for this conclusion. Such evidence does not comply with the regulatory standards for establishing an inability to work. The hearing officer's finding to the contrary is against the great weight and preponderance of the evidence and her failure to apply the regulatory standards is error as a matter of law.

In light of our holding that the claimant failed to produce the required narrative establishing an inability to work because of his compensable injury, we need not further address whether other reports showed an ability to work.

For the foregoing reasons, we find that the hearing officer's determinations that the claimant had no ability to work in any capacity during the qualifying period and that he was entitled to 10th quarter SIBs are against the great weight and preponderance of the evidence and erroneous as a matter of law. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). The decision and order is reversed and a new decision and order rendered that the claimant is not entitled to 10th quarter SIBs.

Alan C. Ernst
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge