

APPEAL NO. 001195

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following the contested case hearing held on August 9, 1999. The hearing officer issued a Decision and Order which determined that the respondent/cross-appellant (claimant) is entitled to supplemental income benefits (SIBs) for the first and second quarters. In Texas Workers' Compensation Commission Appeal No. 991978, decided October 27, 1999, the Appeals Panel reversed and remanded the case for further consideration, noting that the hearing officer's findings failed to distinguish between the claimant's impairment from the compensable injury of _____, and his impairment from an ordinary disease of life or other conditions not part of his compensable injury. We also observed that the new SIBs rules would apply to the second quarter and that it did not appear that there had been an adjudication of the extent of the claimant's compensable injury, given that he suffered an apparent stroke in late October 1997.

At a remand hearing held on April 12, 2000, no additional testimony was adduced but the parties did introduce additional exhibits and made closing arguments. The hearing officer found that the claimant had no ability to work during the qualifying periods and, thus, satisfied the "good faith" criterion for SIBs for both quarters; that the claimant's unemployment during the first qualifying period was a direct result of his impairment; that the claimant is entitled to SIBs for the first quarter; that during the second quarter qualifying period the claimant's inability to work was due to his overall medical condition rather than the impairment from the compensable injury; that the claimant's unemployment during the second quarter qualifying period was not a direct result of his impairment from the compensable injury; and that the claimant is not entitled to SIBs for the second quarter.

The appellant/cross-respondent (carrier) requests review of the first quarter SIBs determination while the claimant requests our review of the second quarter determination. Both parties filed responses.

DECISION

Affirmed in part; reversed and rendered in part.

Our decision in Appeal No. 991978, *supra*, sets out the extensive evidence in the record to that point in this proceeding and we will not repeat it. We noted that while the filing or qualifying period dates were not stipulated, the claimant averred without objection that these periods extended from December 9, 1998, through May 25, 1999. As we noted in that decision, in its Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21), the carrier accepted only the cervical and lumbar spine injuries that the claimant sustained at work on _____, and denied liability for all of the claimant's other physical maladies identified by Dr. L in his March 27, 1998, report. There is no evidence in the record that the claimant ever sought to adjudicate through the dispute resolution process the extent of his compensable injury and, in particular, the apparent

stroke he suffered at home in late October 1997 and its sequelae. Nevertheless, in her nearly identical statements of the evidence in her two decisions in this case, the hearing officer states the following:

During the qualifying period for the first and second quarters, Claimant continued to suffer lasting effects of the impairment resulting from the _____ compensable injury, including popping of his neck, excruciating neck pain, restricted cervical [ROM], headaches, constant mid- and low back pain, chest pain, pain, numbness and tingling in his arms, and numbness and weakness in his legs. Claimant also suffered impaired vision, speech deficit, balance and coordination deficits, and he is confined to a wheelchair, which appear to be related to the stroke rather than the compensable injury. Claimant was unable to return to work in any capacity during the first and second quarter qualifying periods.

It was undisputed that the claimant did not return to work, or look for work, during the filing period for the first quarter and the qualifying period for the second.

In both the original and the remand decisions, the hearing officer found that since the claimant had no ability to work during the qualifying periods for the first and second quarters, he satisfied the good faith criterion for SIBs in that his seeking employment in good faith commensurate with his ability to work would be not to seek employment at all. The carrier disputes this finding for the first quarter, the quarter not subject to the "new" SIBs rules.

Dr. J, a neurologist, wrote on December 10, 1999, that the claimant's documented industrial compensable injuries prevent him from providing any type of work; that the neck injuries cause numbness and pain in the upper extremities; that the claimant's cervical ROM is severely restricted; that the claimant has pain and decreased feeling in the lower extremities associated with significant back pain; and that, in Dr. J's opinion, the claimant is unable to perform any form of work. Dr. J also stated, as he had previously, that the claimant had the suspected cerebral vascular accident while being treated for his injuries. The carrier introduced the February 18, 2000, report of Dr. S who reviewed the medical records. Dr. S opined that, without considering the stroke, the claimant would have been able to work in a sedentary position following "his minor injury on _____." The carrier introduced the February 26, 2000, report of Dr. B who also opined that, based on the extent of the claimant's cervical spine injury, the claimant would have been able to perform sedentary work.

We note that the claimant is wheelchair bound; has ataxia; can barely be understood; has impaired vision; and, thus, his inability to work is so obvious as to be irrefutable. In Texas Workers' Compensation Commission Appeal No. 980773, decided May 22, 1998, the Appeals Panel, citing other decisions, stated that a hearing officer should consider a claimant's overall condition, not just the impairment from the compensable injury, in determining whether a claimant has some ability to work, but that

when considering the direct result criterion, only the impairment from the compensable injury should be considered. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We are satisfied that the evidence is sufficient to support the challenged finding. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

As for the second SIBs criterion in dispute, the carrier challenges findings that the claimant's inability to work during the first quarter qualifying period was due, in part, to the impairment from the compensable injury and that the claimant's unemployment during the first quarter filing period was a direct result of the claimant's impairment from the compensable injury. Again, we are satisfied that the evidence is sufficient to support these findings. The Appeals Panel has stated that the "good faith" job search and the "direct result" requirements are different SIBs eligibility criteria (Texas Workers' Compensation Commission Appeal No. 960165, decided March 7, 1996); that a claimant need not establish that his or her impairment is **the only cause** of the unemployment in order to satisfy the direct result criterion but, rather, that a claimant need only establish that the impairment is **a cause** of the unemployment (Texas Workers' Compensation Commission Appeal No. 960905, decided June 25, 1996); that "direct result" does not require a claimant to prove that the impairment is the sole cause of the unemployment (Texas Workers' Compensation Commission Appeal No. 952082, decided January 10, 1996); and that a finding that a claimant's unemployment is a direct result of the impairment is sufficiently supported by evidence that an injured employee sustained a serious injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury (Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996).

We are satisfied that the evidence is sufficient to support the "direct result" finding for the first quarter challenged by the carrier, notwithstanding the medical evidence relating to the claimant's apparent stroke in late October 1997. The carrier is correct in contending that the unemployment must be a direct result of impairment from the compensable injury and that impairment must be permanent. The 1989 Act in Section 401.011(23) defines impairment to mean any anatomic or functional abnormality, or loss after maximum medical improvement, that results from a compensable injury and is reasonably presumed to be permanent. The carrier is incorrect, however, in contending that such impairment from the compensable injury must have resulted in an impairment rating to be considered. See Texas Workers' Compensation Commission Appeal No. 970050, decided February 21, 1997.

We observe that in Texas Workers' Compensation Commission Appeal No. 000937, decided June 12, 2000, the Appeals Panel affirmed the decision of a hearing officer which determined that the injured employee was not entitled to SIBs for the third quarter because the unemployment was not a direct result of the impairment from the compensable injury

but, rather, a result of unrelated cerebral vascular pathologies. See *also* Texas Workers' Compensation Commission Appeal No. 94907, decided August 16, 1994, where the Appeals Panel affirmed a hearing officer who found that the claimant was not entitled to SIBs because his unemployment was not a direct result of his compensable injury but, rather, of a superceding injury. *And* see Texas Workers' Compensation Commission Appeal No. 94234, decided April 7, 1994; Texas Workers' Compensation Commission Appeal No. 960880, decided June 18, 1996.

Because we find the evidence sufficient to support the favorable finding on the "direct result" criterion for the first quarter, we find the adverse finding for the second quarter to be against the great weight of the evidence. There is no evidence that the claimant had any less impairment from the compensable injury during the second quarter qualifying period than during the first quarter filing period.

We affirm the determination that the claimant is entitled to SIBs for the first quarter. We reverse the determination that the claimant is not entitled to SIBs for the second quarter and render a new decision that the claimant is entitled to SIBs for the second quarter.

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge