

## APPEAL NO. 010076

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 7, 2000, a hearing was held. The hearing officer resolved the disputed issues by deciding that the respondent/cross-appellant's (claimant) compensable injury of \_\_\_\_\_, does not include and extend to the condition of dystonia and that the claimant is entitled to supplemental income benefits (SIBs) for the seventh quarter. The claimant appealed the hearing officer's decision that the compensable injury of \_\_\_\_\_, does not include and extend to the condition of dystonia and the appellant/cross-respondent (carrier) appealed the hearing officer's decision that the claimant is entitled to SIBs for the seventh quarter.

### DECISION

Affirmed in part and reversed and rendered in part.

The hearing officer did not err in determining that the claimant's compensable injury of \_\_\_\_\_, does not include and extend to the condition of dystonia.

According to medical articles in evidence, dystonia is a neurological disorder that is characterized by involuntary muscle contractions which force certain parts of the body into abnormal, sometimes painful, movements or positions. One medical article states that dystonia may result from a hereditary condition or as a result of a brain injury and that researchers believe that some forms of dystonia may be caused by breakdown of the dopamine system in the basal ganglia, a collection of structures in the brain that control movement. Another medical article states that cervical dystonia, also known as spasmodic torticollis, is a focal dystonia, in which neck muscles contract involuntarily, causing abnormal movements and posture of the head and neck and that cervical dystonia is believed to be due to abnormal functioning of the basal ganglia, and that, though a history of head or neck injury may be obtained in some patients, there is as yet no clear evidence to support the theory that cervical dystonia is directly related to trauma. Another medical article states that, since the underlying cause of spasmodic torticollis remains unknown, there is at present no cure for the condition. One medical article states that a large number of drugs are capable of causing dystonia, that physical trauma to a body part may precede dystonia of that part, and that spasmodic torticollis may be preceded by a neck injury.

The claimant testified that on \_\_\_\_\_, she was working at her job as an engraver when the back of her chair broke and she fell backwards, hitting her head on a counter and then falling to the floor. In April 1995, Dr. D, the claimant's treating doctor, diagnosed the claimant as having neck pain and spastic torticollis. In May 1995, the claimant underwent cervical surgery, including a fusion, for herniated discs at C5-6 and C6-7. Dr. D referred the claimant to Dr. H, who diagnosed the claimant with severe torticollis. Dr. D wrote in 1996 and 1997 that the claimant has cervical spastic torticollis and dystonia. Dr. D wrote in March 1997 that he does not know if the claimant's spastic torticollis and dystonia are related to her work injury. Dr. D referred the claimant to Dr. B who, in June

1996, wrote in the history section of his report that the claimant's dystonia and torticollis of the cervical region had been present prior to the claimant's cervical surgery and were secondary to her work-related injury.

Dr. D referred the claimant to Dr. W for evaluation of her dystonia. Dr. W wrote in April 1997 that it is difficult to say whether the dystonia is a direct result of the claimant's current injury because the claimant had documented dystonia prior to her injury, but that the dystonia was significantly exacerbated by her injury. However, Dr. W went on to state that since he did not have adequate documentation of the seriousness of the dystonia prior to the injury, it was difficult to comment on whether the injury is a direct cause of the claimant's current dystonia.

Dr. J, the designated doctor chosen by the Texas Workers' Compensation Commission, reported in August 1997 that the claimant had reached maximum medical improvement statutorily with a 37% impairment rating (IR). Dr. J assigned impairment of 10% due to a surgically treated disc lesion with residual effects and multiple operative levels and 30% for ankylosis of the cervical spine. Dr. J noted that the ankylosis is due to both the cervical spine surgery and the dystonia and that he did not feel qualified to state what percentage of the impairment is related to dystonia nor how the dystonia is related to the cervical spine injury. Dr. J also noted that he assigned no impairment for motor deficits because those deficits are related to the dystonia and not to the cervical spine injury. We do not agree with the claimant's implied assertion that Dr. J rated the claimant's dystonia.

In response to written questions, Dr. D indicated that, if the claimant did not have any history of spastic torticollis prior to her \_\_\_\_\_ work injury, then that injury probably triggered the torticollis.

The claimant said that she was injured in 1979 while in the army when a locker fell on her and that she believed that she had some injuries to her head in that accident. In an August 2000 medical report, it is noted that the claimant gave a history of having been injured in the army when a locker fell on her, that she was told that she had injured her basal ganglia, and that she has had dystonia since then. An August 1986 medical report noted that the claimant had a whiplash injury from a motor vehicle accident and had torticollis (we agree with the claimant that the hearing officer incorrectly noted that to be an August 1996 report). A June 1987 medical report noted that the claimant had been in another motor vehicle accident and had cervical muscle spasms. A November 1988 medical report noted that the claimant complained of neck stiffness. A December 1998 medical report noted a history of the claimant's having had dystonic changes since 1979 and that she had been discharged from the army in 1982 with a movement disorder and that by that time she had dystonia.

The hearing officer considered the conflicting evidence and determined that the claimant's compensable injury of \_\_\_\_\_, does not include and extend to the dystonia condition. The claimant contends that the evidence proved that the claimant's dystonia is

related to her compensable injury or was aggravated by the compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer wrote that the medical literature and medical reports did not establish that the dystonia condition was causally related to the on-the-job injury. While an aggravation of a preexisting condition can be a compensable injury, the hearing officer was not compelled to find from the evidence that an aggravation occurred. We conclude that the hearing officer's decision that the compensable injury of \_\_\_\_\_, does not include and extend to the dystonia condition is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We do not agree with the claimant's assertion that the carrier is estopped from disputing that the compensable injury does not extend to and include the claimant's dystonia. The claimant contends that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.6(b) (Rule 124.6(b)) violates the "due process and taking clause of the U.S. and Texas Constitutions." Rule 124.6 was repealed effective March 13, 2000, and was not an issue in this case.

The hearing officer erred in determining that the claimant is entitled to SIBs for the seventh quarter.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. Rule 130.102(b) provides that an injured employee who has an IR of 15% or greater, and who has not commuted any impairment income benefits, is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage (AWW) as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work. The seventh quarter for SIBs was from August 2 through October 31, 2000.

With regard to the direct result criterion for SIBs, Rule 130.102(c) provides that an injured employee has earned less than 80% of the employee's AWW as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings. The hearing officer found that the impairment from the compensable injury was a cause of the claimant's unemployment during the qualifying period. The hearing officer's finding on the direct result criterion for SIBs is supported by the claimant's testimony, concerning her work duties that required lifting and carrying of heavy items, and Dr. D's reports.

With regard to the good faith criterion for SIBs, Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The parties stipulated that the claimant did not have

any ability to work during the qualifying period and that the claimant was unemployed and did not seek work during the qualifying period. The hearing officer made no findings of fact regarding the good faith criterion for SIBs.

In an April 1999 report, Dr. D wrote that the claimant's spastic torticollis and chronic neck condition as well as the dystonia and spasticity of the upper and lower extremities prevent the claimant from engaging in any type of employment. According to Dr. D's report of July 7, 2000, the claimant is "permanently disabled" but "the disability mainly relates to the dystonia and not to the cervical workmen's comp injury." Dr. D went on to state that "if were [sic] dealing only with her neck condition, then she would probably be able to do some type of work . . . ." In answer to written questions, Dr. D wrote that "the predominance of her problems are related to progression of the dystonia and this would be the reason that she is totally disabled and incapable of performing any type of gainful employment."

Texas Workers' Compensation Commission Appeal No. 000835, decided June 5, 2000, and Texas Workers' Compensation Commission Appeal No. 002192, decided October 27, 2000, held that the narrative report from the doctor must specifically explain how the compensable injury causes a total inability to work. See also Texas Workers' Compensation Commission Appeal No. 991616, decided September 5, 1999. In particular, Appeal No. 000835 cited the preamble to Rule 130.102(d)(3) (the no-ability-to work provision effective January 31, 1999, that was renumbered as 130.102(d)(4) effective November 28, 1999), which noted that the good faith, no-ability-to work provision should be a limited situation and only applies where it is clear that the injured employee cannot return to work because of the compensable injury. In the instant case, there is no narrative report from a doctor that specifically explains how the compensable injury causes a total inability to work and thus the hearing officer erred in determining that the claimant is entitled to SIBs for the seventh quarter.

The hearing officer's decision that the claimant's compensable injury of \_\_\_\_\_, does not include and extend to the dystonia condition is affirmed. The hearing officer's

decision that the claimant is entitled to SIBs for the seventh quarter is reversed and a new decision is rendered that the claimant is not entitled to SIBs for the seventh quarter.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge