

APPEAL NO. 010409

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 29, 2001. With regard to the issues before him, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first through sixth quarters based on both a lack of good faith job search and that the claimant's unemployment was not a direct result of his impairment.

The claimant's appeal does not address any of the specific findings and appeals, generally, that he should be entitled to SIBs because of his serious injury and other factors. The claimant, who was represented at the CCH, apparently attaches his claim file with the appeal, including matters which were excluded at the CCH and information not offered at the CCH. The respondent (carrier) objects to the attachments, which include new evidence and/or exhibits not admitted at the CCH and otherwise urges affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

As the carrier indicates, we do not generally consider matters presented for the first time on appeal and our review of the claimant's attachments does not persuade us differently in this case. See Texas Workers' Compensation Commission Appeal No. 000929, decided June 15, 2000.

Sections 408.142(a) and 408.143, and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) provide the statutory and regulatory requirements for entitlement to SIBs. At issue in this case is whether the claimant made the requisite good faith effort to obtain employment commensurate with his ability to work and whether the claimant's unemployment is a direct result of his impairment.

The parties stipulated that the claimant sustained a compensable (low back) injury on _____; that the claimant has a 16% impairment rating; that impairment income benefits have not been commuted; and that the qualifying period for the first quarter began on March 6, 1999, and the qualifying period for the sixth quarter ended on September 1, 2000.

The claimant proceeded on somewhat of a hybrid theory, contending both that he had a total inability to work during the relevant qualifying periods and that in fact he had had a second spinal surgery in December 2000, after the qualifying periods at issue and that he had made a good faith effort to seek employment during the second, third, and fourth quarter qualifying periods because he was told he had to do so.

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. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

The hearing officer found that the claimant had some ability to work during the qualifying periods for the first four quarters; that the claimant did not look for work (or document his job search efforts) each week of the qualifying periods for the quarters at issue; that there is no narrative report from a doctor which specifically explains how the injury caused a total inability to work during the qualifying periods for the disputed quarters; and that at least two doctors' reports show that the claimant is able to return to some kind of light work. The hearing officer's findings regarding those matters are supported by the evidence and are affirmed.

The hearing officer also commented that Rule 130.106 (and we note Section 408.146(c) as well) provides that a claimant who is not entitled to SIBs for the period of four consecutive quarters permanently loses entitlement to SIBs and concluded that the claimant "has permanently lost entitlement to [SIBs]." That may be true; however, the permanent loss of entitlement to SIBs was not an issue before the hearing officer and we decline to consider it subsumed as an issue in which multiple quarters of SIBs are contested. Consequently, we disregard those determinations that deal with the permanent loss of entitlement to SIBs as being surplusage and not an issue before the hearing officer.

On the matter of the direct result requirement, we have frequently noted that a direct result determination is sufficiently supported if the record established that the claimant sustained a serious injury with lasting effects such that he or she cannot reasonably perform the job he or she was doing at the time of the compensable injury. Texas Workers' Compensation Commission Appeal No. 001847, decided September 15, 2000; Texas Workers' Compensation Commission Appeal No. 001310, decided July 21, 2000; and Texas Workers' Compensation Commission Appeal No. 002982, decided February 12, 2001. While there are medical reports releasing the claimant back to light duty with restrictions, nowhere is there a suggestion that the claimant can return to work at his preinjury job as a laborer. Consequently, we hold that the hearing officer's determination that the claimant's unemployment is not a direct result of his impairment to be unsupported by the evidence and we reverse that finding and render a new decision that the claimant's unemployment was a direct result of his impairment.

We caution, however, that our reversal of the hearing officer's determination on direct result does not change the end result of this decision, that the claimant is not entitled to SIBs for the first through sixth quarters. Likewise, we note the claimant's testimony that his second spinal surgery in December 2000 was paid for by Medicaid, rather than the carrier and point out that Section 408.021 provides for lifetime medical care (actually the

statute says "all health care reasonably required") to "cure" or promote recovery from the compensable injury or to enhance the ability of the employee to return to or retain employment. Regardless of our affirmance that the claimant is not entitled to SIBs for the six quarters at issue (and perhaps may not be entitled to further income benefits), the claimant continues to be eligible for all reasonable and necessary medical care required for the compensable injury.

The hearing officer's decision and order are affirmed in part and reversed and rendered in part.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge