

APPEAL NO. 010445

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 1, 2001. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth and seventh quarters, basically because "[n]one of the Claimant's doctors provided a narrative report which specifically explains how the injury causes a total inability to work."

The claimant appeals, citing a report by Dr. M, which the claimant contends does provide "a narrative which was specific as to his abilities and the conditions." The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

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. The hearing officer's determination that the claimant's unemployment during the qualifying period for the seventh SIBs quarter was a direct result of his impairment from the compensable injury has not been appealed and will not be addressed further.

The parties stipulated that the claimant sustained a compensable injury on _____; that the claimant has a 29% impairment rating; that impairment income benefits have not been commuted; that the qualifying period for the sixth quarter began on February 16, 2000, and that the qualifying period for the seventh quarter ended on August 15, 2000. The parties also stipulated that the claimant earned no wages and made no job contacts during the qualifying periods.

At issue here is whether the claimant had an ability to work in any capacity. The standard of what constitutes a good faith effort to obtain employment in cases of a total inability to work was specifically defined and addressed in Rule 130.102(d). Rule 130.102(d)(4) provides that the statutory good faith requirement may be met if the employee:

- (4) 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[.]

There are a number of very brief handwritten progress notes in evidence which comment on the claimant's treatment; however, the claimant appears to rely on a typed report dated February 14, 2000, from Dr. M which states, in its entirety:

The above named patient is totally and permanently disabled (unable to work) due to medical reasons. He continues to experience neck pain into his arms accompanied by numbness as well as back/knee pain and discomfort.

The hearing officer found that that report did not meet the standard of "a narrative report from a doctor which specifically explains how the injury causes a total inability to work." We find that the hearing officer's decision is supported by the evidence.

Although not mentioned, the hearing officer could also find from the evidence that there were several other reports and a letter which fairly clearly show that the claimant is able to return to work in some limited capacity. Therefore, even had Dr. M's report met the requirement of a narrative report which specifically explains how the injury causes a total inability to work, there are other records which indicate that the claimant has not met the requirements of Rule 130.102(d)(4).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge