APPEAL NO. 010897

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 April 10, 2001. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the first quarter.

The appellant (carrier) appealed, contending that the hearing officer's decision is not supported by the evidence and that the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) had not been met. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

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 impairment rating (IR) of 15% or greater, and who has not commuted any impairment income benefits (IIBs), 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 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 hearing officer's finding that the claimant's unemployment was a direct result of his impairment was appealed, but no reason was given.

The claimant had been employed as a welder/carpenter. The parties stipulated that the claimant sustained a compensable (cervical and lumbar) injury on _____; that the claimant has an IR of 35%; that IIBs have not been commuted; and that the qualifying period for the first quarter was from September 8, 2000, through December 7, 2000. The claimant had both cervical and lumbar spinal surgery. Although the claimant testified that he talked with some people about employment, those efforts were not documented and it is not clear that they were even during the qualifying period.

The claimant seeks to qualify for SIBs based on a total inability to work. 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 hearing officer summarizes the medical evidence in some detail and references the language of Rule 130.102(d)(4), if not the actual citation. The record includes reports from Dr. C, the claimant's treating doctor; Dr. H, a referral doctor; and Dr. HH, the carrier's required medical examination (RME) doctor, as well as reports from another doctor, which do not address ability to work.

The hearing officer commented:

> The records of [Dr. C] and [Dr. H], as well as [Dr. HH] (Carrier's RME doctor) show, in narrative form that Claimant is unable to perform any type of work in any capacity and specifically explain how the injury causes a total inability to work.

Rule 130.102(d)(4) speaks in terms of "a narrative report from a doctor" (emphasis added) and we reject the notion that the hearing officer may consider a conglomeration of records from a number of doctors to be a narrative report from a doctor which specifically explains how the injury causes a total inability to work. However, we have also indicated in Texas Workers' Compensation Commission Appeal No. 010549, decided April 23, 2001, and Texas Workers' Compensation Commission Appeal No. 002160, decided October 23, 2000, that a doctor may incorporate, by reference, other medical reports. As the carrier notes, some of Dr. C's "narrative reports" are prescription pad notes or progress notes which contain little, if any, explanation for Dr. C's conclusions. Dr. C, in a note dated January 19, 2001, concluded:

> Please be informed that [claimant] is disabled at the present time for any kind of work. This is based on what the numerous specialist[s] who have seen him and still treating him for his pain. I have not evaluated him for his degree of incapacitation because I rely on specialist[s] to do this evaluation. This is best done by a specialist in Physical Medicine.

Dr. H is one of the specialists to whom Dr. C was referring. Dr. H notes the claimant's medications and clinical treatment, and, in a handwritten note dated January 19, 2001, comments that he had seen the claimant for "chronic back & neck pain" and that "numerous injections" had given the claimant little or no relief. He also suggests controlling the claimant's pain with a spinal cord stimulator. None of those reports sufficiently or specifically explain how the injury causes a total inability to work in any capacity. We hold that the hearing officer's comment (the hearing officer did not make any specific findings on this point) that the records of Dr. C and Dr. H, as well as Dr. HH, "show in narrative form that Claimant is unable to perform any type of work in any capacity" is not supported by the evidence.

Both of the parties, and the hearing officer, cite Dr. HH's report dated March 22, 2001 (three and one-half months after the qualifying period). The carrier asserts it is another record which shows the claimant is able to return to work; the claimant and the hearing officer contend that it is a qualified report which shows no present ability to work. The report is very thorough in terms of history and treatment and concludes with the operative paragraph which states:

> It would be my conclusion at this point that [claimant] will not resume the type of employment that he had done previously. He had worked in construction and had done just basically completely manual labor his entire life, and I see

> no reasonable likelihood that he will ever return to that. If he is ever to resume any employment, it would have to be more of a sedentary type occupation which would allow him frequent changing of positions, and with his current symptom state and some of the psychological overlay, I think it would be difficult for him to resume functional gainful employment on any full time basis.

Dr. HH clearly states that the claimant cannot return to full-time work in his preinjury employment but does not address sedentary-type employment during the September/December 2000 time frame (the qualifying period). While the report could be, and was, read differently, we cannot agree that the hearing officer's characterization of the report as a "qualified statement" of ability "some time in the future" is incorrect.

In that we are reversing the hearing officer's implied finding that a narrative report from a doctor specifically explains how the injury causes a total inability to work, the requirements of Rule 130.102(d)(4) have not been met. We reverse the hearing officer's decision that the claimant is entitled to SIBs for the first quarter and render a new decision that the claimant is not entitled to SIBs for the first quarter.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge