

APPEAL NO. 011268  
FILED JULY 19, 2001

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 May 17, 2001. With respect to the issue before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the sixth quarter. In its appeal, the appellant (carrier) asserts that the hearing officer erred in determining that the claimant is entitled to sixth quarter SIBs because the claimant did not sustain his burden of proving a total inability to work under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)). The appeals file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury on \_\_\_\_\_. The parties stipulated that the claimant had an impairment rating of 17%; that he did not commute his impairment income benefits; and that the sixth quarter of SIBs ran from February 3 to May 4, 2001, with a corresponding qualifying period of October 22, 2000, to January 20, 2001. 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.

On appeal, the carrier first asserts that the hearing officer erred in determining that the claimant submitted a narrative report from a doctor which conforms with the requirements of Rule 130.102(d)(4). The question of whether there is a narrative which specifically explains how the injury causes a total inability to work is a question of fact. In the report which the hearing officer identified as the narrative, Dr. W, the claimant's treating doctor, states:

[Claimant] is currently unable to perform any work duties as a result of his severe back pain and rigidity with associated weakness and numbness in his legs. [Claimant] has difficulty ambulating safely. He requires strong muscle relaxers and painkillers to control his pain and muscle spasms related to his injuries. Side effects of these medications include drowsiness, fatigue, and confusion. [Claimant] is unable to perform even sedentary work duties due to decreased concentration and attention span secondary to medication side effects.

The hearing officer determined that this report from Dr. W satisfied the narrative requirement of Rule 130.102(d)(4). Our review of the record does not demonstrate that the hearing officer's determination in that regard is so against the great weight of the evidence as to compel its reversal on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier next asserts that the hearing officer erred in determining that no other records show that the claimant is able to return to work. The carrier specifically points to the required medical evaluation of Dr. S. The carrier contends that in his January 8, 2001, report Dr. S "notes that the claimant will be able to perform sedentary work which allows him to sit and stand and move about at will." In that report, Dr. S actually states that the claimant's prognosis is guarded and opines that "[i]t **might** be that he **might** be able to perform sedentary work that allows him to be able to sit and stand and move about ad lib." (Emphasis added.) The hearing officer determined that, based on the equivocal nature of Dr. S's opinion, the report was not another record showing an ability to work. Again, our review of the record does not reveal that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. As such, we will not disturb that determination, or the determination that the claimant is entitled to SIBs for the sixth quarter, on appeal. Pool; Cain.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert E. Lang  
Appeals Panel  
Manager/Judge