

APPEAL NO. 011456  
FILED AUGUST 9, 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 24, 2001. The hearing officer determined that appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 11th quarter. Claimant appealed this determination on sufficiency grounds. Claimant also contends that respondent (carrier) failed to compare the 11th quarter with the prior quarter, pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.108(a) (Rule 130.108(a)). Carrier responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We reverse and remand.

The issue in this case was whether claimant is entitled to 11th quarter SIBs. The hearing officer determined that claimant did not meet her burden to prove that she had no ability to work during the qualifying period, which ran from July 15, 2000, to October 13, 2000. In her decision, the hearing officer discussed the requirement that there be a narrative report from a doctor which specifically explains how the injury causes a total inability to work. See Rule 130.102(d)(4). The hearing officer said:

As evidenced by Carrier's Exhibit 2, Claimant clearly [cannot] meet the second prong [of Rule 130.102(d)(4)] *in that* the medical submitted by [Dr. P] is conclusory, and simply states:

To Whom It May Concern,

[Claimant] is physically and emotionally unable to work for an indefinite period of time. [Emphasis added.]

The hearing officer did not mention the report from Dr. W, dated May 8, 2001. This May 8, 2001, report discusses claimant's ability to work during the qualifying period and discusses claimant's physical impairments. From the record, it appears that Dr. W and Dr. P work in the same clinic and that claimant has treated there since before the filing period began.

Certainly, we would assume that a hearing officer has considered all the evidence in the file, unless the record specifically indicates otherwise. In the case before us, because of the hearing officer's discussion of the evidence, it appears that the May 8, 2001, report was not considered. The hearing officer stated that claimant cannot meet her burden "in that" Dr. P's report is not an adequate narrative. This indicates that Dr. P's report was the only report the hearing officer considered to determine whether there was an adequate narrative. Given the other evidence in the record, we must remand for further findings. In remanding, we are

in no way commenting regarding the evidence or the future outcome of the decision on remand. We remand this case for reconsideration of the evidence and for findings regarding whether the May 8, 2001, report is a narrative that specifically explains how the injury causes a total inability to work. In remanding, we would note that we do not agree with claimant's assertion that the medical evidence "as a whole" can be combined to create a narrative under Rule 130.102(d)(4). Texas Workers' Compensation Commission Appeal No. 011152, decided July 16, 2001. Because of the remand, we will defer addressing the issue regarding Rule 130.108.

We reverse the hearing officer's decision and remand this case for reconsideration consistent with this decision. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 (amended June 17, 2001). See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Michael B. McShane  
Appeals Judge