

APPEAL NO. 011588
FILED AUGUST 15, 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 (CCH) was held on June 21, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 13th quarter, finding that the claimant's unemployment during the qualifying period for the 13th quarter was not the direct result of his impairment. The claimant has appealed the adverse direct result determination. The respondent (self-insured) urges that the hearing officer's decision be affirmed. The hearing officer's determination that the claimant had made a good faith effort to seek employment during the qualifying period for the 13th quarter was not appealed and has become final. Section 410.169.

DECISION

Reversed and rendered.

There are four eligibility criteria that must be met to qualify for SIBs, set out in Section 408.142(a): that the employee "(1) has an impairment rating of 15 percent or more . . .; (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment; (3) has not elected to commute a portion of the impairment income benefit . . .; and (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work."

The hearing officer makes it clear here that she based her direct result finding on the claimant's subjective assertion that he was physically capable of performing all the jobs he applied for and that he would not have applied for a job which he felt he was not physically capable of performing. As we stated in Texas Workers' Compensation Commission Appeal No. 962356, decided January 2, 1997:

The question was whether his current unemployment directly resulted from his impairment. We do not agree that the subjective desire to return to one's previous line of work, coupled with the willingness to work through pain to do the job, is probative evidence, let alone dispositive evidence, of the link between the impairment and current unemployment The Appeals Panel has held that the ability to perform jobs sought does not in and of itself mean the unemployment is not the "direct result" of the impairment. Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994. It appears to us that the hearing officer in this case simply applied a variation of the carrier's rejected argument in Appeal No. 94533: that the claimant's unemployment did not result from his impairment because the jobs he sought were jobs he could do We have before also stated that the impairment is not required to be the sole cause of unemployment for purposes of SIB[s].

Texas Workers' Compensation Commission Appeal No. 960008, decided February 16, 1996. We also noted in that decision that an injured worker's subjective assessment of his inability to work without medical evidence would not be persuasive regarding inability to work.

Applying the foregoing principles to this case, we note that medical records during the qualifying period show that the claimant was in a pain management program for low back pain that radiated into both legs. The claimant reported an increase in pain from 7.5 (on a scale of 10) to 8 during the qualifying period. He was prescribed morphine throughout the period. In spite of the hearing officer's contention that there was no evidence that the claimant could not return to his previous employment, the record contains two Texas Workers' Compensation Work Status Report (TWCC-73) forms from the claimant's treating doctor, dated February 5, 2001, and April 2, 2001, which state that "the injured employee's medical condition resulting from the workers' compensation injury has prevented and still prevents the employee from returning to work . . ." Although the earlier of the TWCC-73's is dated two weeks after the end of the qualifying period, the statement that the employee's condition "has prevented and still prevents" return to work is sufficient to show that the employee was suffering the effects of his injury at that time. The Appeals Panel has frequently stated that a finding of direct result may be affirmed based on evidence of a serious injury with lasting effects and of an inability to reasonably perform the type of work being done at the time of the injury. See, e.g., Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995. The fact that the treating doctor affirmatively stated that the claimant is prevented from returning to work satisfies us that the claimant's unemployment was a direct result of his impairment. The hearing officer's determination that the claimant's unemployment was not a direct result of his impairment is contrary to the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We reverse the hearing officer's decision and render a new decision that the claimant's unemployment during the qualifying period for the 13th quarter was a direct result of his impairment and that he was therefore eligible for SIBs.

The true corporate name of the insurance carrier is **UNITED INDEPENDENT SCHOOL DISTRICT** and the name and address of its registered agent for service of process is

**ROBERT CHAPA
UNITED INDEPENDENT SCHOOL
DISTRICT RISK MANAGEMENT
201 LINDENWOOD
LAREDO TX 78045.**

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge