

APPEAL NO. 011729
FILED SEPTEMBER 17, 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 June 29, 2001. The record closed on July 5, 2001. Regarding the sole issue before her, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the eighth quarter, as he had a total inability to work during the qualifying period for the eighth quarter. In its appeal, the appellant (carrier) argues that the "psychological evidence used to support the claimant's no ability to work position is legally deficient." The carrier also asserts that the claimant's "mental disability does not naturally and directly flow from the compensable injury," although it acknowledges that the Appeals Panel found otherwise. See Texas Workers' Compensation Commission Appeal No. 010321, decided March 28, 2001, where the Appeals Panel reversed the hearing officer's determination that the claimant's compensable injury did not extend to his depression and rendered a new decision that the claimant's depression is part of his compensable injury. The carrier also states that the Appeals Panel decision in that regard has been appealed to the district court. The appeal 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 _____; that the claimant's compensable injury resulted in an impairment rating of 15% or greater; that the claimant did not commute his impairment income benefits; and that the claimant made no search for employment during the qualifying period for the eighth quarter. The eighth quarter of SIBs was identified as the period from April 3 to July 2, 2001, and the qualifying period was identified as the period from December 20, 2000, to March 20, 2001. For purposes of this case, our prior determination that the claimant's compensable injury includes his depression is binding. Section 410.205(b).

The claimant's treating doctor for his depression is Dr. K, a psychiatrist. On January 30, 2001, Dr. K wrote a "To Whom it May Concern" letter that states:

I have known [claimant] for the last 3 years. He has been depressed. He is still depressed because of his injury, which caused him not to be able to work and support his family. He feels worthless and hopeless because of his inability to work and support his family. He has been hearing voices telling him he is not good for anything. He cannot work even a secondary [sic] job because of his depression, hearing voices and not able to concentrate on work. I think he is totally disabled and may not be able to go back to work in the near future.

On June 29, 2001, Dr. K responded to questions from the ombudsman assisting the claimant. Specifically, Dr. K responded “yes” to the following questions:

1. Based on a review of the medical records, since the depression resulting from [claimant’s] compensable injury of _____, includes psychotic features, more specifically, since [claimant] experiences auditory hallucinations at times, directing him to commit homicidal acts and since he did not receive reasonable and necessary medications to ease the symptoms of this condition between December 20, 2000, and March 20, 2001, would you state whether or not it is your opinion that he was wholly unable to engage in any type of employment during that interval?
2. While you did not evaluate [claimant] during the time frame of December 20, 2000, and March 20, 2001, you did treat him prior to that time, and have since resumed your treatment of his condition, would you state whether or not it is your medical opinion based on your evaluations of [claimant] that he constituted a potential physical danger to himself or other persons between December 20, 2000, and March 20, 2001, and/or his condition would have become even more unstable had he attempted to seek or to engage in any type of employment during this time frame?
3. Would you please state whether or not it is your opinion that due to [claimant’s] lack of medication between December 20, 2000, and March 20, 2001, this rendered him unable to control his impulses to the extent which would be necessary to seek or engage in employment without representing a threat to himself and others?

In response to the third question, Dr. K wrote in the comments section “client is still angry about his problem & unable to get treatment for his problem when he is [illegible].”

On September 7, 2000, Dr. G examined the claimant at the request of the carrier. In his September 19, 2000, report, Dr. G stated:

I really do not feel that [claimant’s] physical disability is as great as his psychiatric disability. However, it is my opinion due to his present condition that he could not handle even the most sedentary type of work. In my opinion, the medical treatment is reasonable and necessary.

The hearing officer determined that the claimant was entitled to SIBs for the eighth quarter under Tex. W.C. Comm’n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule130.102(d)(4)), which provides in pertinent part, 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 work[.]” In its appeal, the carrier argues that the psychological evidence “constitutes nothing more than conclusory assertions and the record is devoid of neuropsychological testing, which would form an objective basis for the psychological diagnosis.” The question of whether Dr. K’s June 29, 2001, answers to the ombudsman’s questions provided sufficient detail to explain how the injury causes a total inability to work was a matter for the hearing officer to resolve. In her discussion section, the hearing officer noted that Claimant’s Exhibit No. 7, Dr. K’s responses to the ombudsman’s questions, “indicates in minute detail why it would have been inadvisable, to say the least, for Claimant to have attempted to become part of the work force during the relevant qualifying period.” Her determination in that regard is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to disturb that determination 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). We likewise find no merit in the assertion that the evidence of no ability to work is deficient as a matter of law because it is not supported by neuropsychological testing. The absence of such objective testing goes to the weight to be given to evidence. The significance, or lack thereof, of the limited nature of the objective testing was also a matter for the hearing officer, as the sole judge of the weight and credibility of the evidence under Section 410.165, to resolve.

The carrier’s challenge to the hearing officer’s direct result determination is dependent upon its continued belief that the depression is not part of the compensable injury. As we noted above, that determination is pending before the district court; however, for purposes of this decision, our determination that the compensable injury extends to the depression remains in effect. Section 410.205(b).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
COMMODORE 1
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge