

APPEAL NO. 011954
FILED SEPTEMBER 25, 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. With respect to the single issue before her, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for ninth quarter. In its appeal, the appellant (carrier) asserts error in the hearing officer's determination that the claimant is entitled to SIBs for the ninth quarter. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on _____; that she was assigned a 15% impairment rating for her injury; that she did not commute her impairment income benefits; and that the ninth quarter of SIBs ran from May 3 to August 1, 2001, with a corresponding qualifying period of January 19 to April 19, 2001. The hearing officer determined that the claimant is entitled to SIBs for the ninth quarter under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) because she had no ability to work in the relevant qualifying period. She further determined that the claimant's treating doctor provided a narrative that specifically explained how the claimant's injury caused a total inability to work and that no other records show an ability to work.

The hearing officer's "other record" determination is what is troubling because she applied the doctrine of collateral estoppel to a determination that the purported "other record" in this case was not another record in the decision that considered the claimant's entitlement to SIBs for the eighth quarter. Specifically, the hearing officer stated:

Although [Dr. G] expressed in a single sentence in April, 2001, that Claimant was to remain on sedentary duty status, as was noted in the Decision and Order dated May 21, 2001, and to which the doctrine of collateral estoppel is applied herein, that sentence does not constitute a record that shows the Claimant possesses some ability to work.

In addition, Finding of Fact No. 16 states that "[b]y previous Decision and Order of the Texas Workers' Compensation Commission [Commission], dated May 21, 2001, the doctrine of collateral estoppel applies to the fact finding that the April 10, 2001, report of [Dr. G] is not a record that shows the Claimant is able to return to work."

The hearing officer erred in applying the doctrine of collateral estoppel in this instance. We have long held the entitlement to each quarter of SIBs stands on its own, Texas Workers' Compensation Commission Appeal No. 970038, decided February 12,

1997 (Unpublished), and that “previous results in favor of either party do not ensure continuance of that result” Texas Workers’ Compensation Commission Appeal No. 980722, decided May 28, 1998. Accordingly, we reverse the determination that the claimant is entitled to SIBs for the ninth quarter and remand for the hearing officer to consider whether the claimant is entitled to SIBs for the ninth quarter because she satisfied the requirements of Rule 130.102(d)(4), without applying the doctrine of collateral estoppel and without otherwise referencing the decision relating to the eighth quarter.

On remand, the hearing officer should also verify the accuracy of the required carrier information providing its true corporate name and the name and address of its registered agent for service of process. The exhibit that purports to provide that information contains a disclaimer, apparently from the carrier’s attorney, as to her inability to verify its accuracy. Thus, because we must remand for another reason, it would seem appropriate for the hearing officer to also ensure that the required carrier information that was provided in this case is in fact accurate.

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 Commission’s Division of Hearings, pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in the Texas Government Code in the computation of the 15-day appeal and response periods.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge