

APPEAL NO. 012133
FILED OCTOBER 16, 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 August 20, 2001. With respect to the issues before her, the hearing officer determined that the respondent/cross-appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 9th, 10th, and 11th quarters, but that he is entitled to SIBs for the 12th quarter. In its appeal, the appellant/cross-respondent (carrier) asserts that the hearing officer's determination that the claimant is entitled to SIBs for the 12th quarter is against the great weight of the evidence. In his response to the carrier's appeal, the claimant urges affirmance of the challenged determination. In his cross-appeal, the claimant asserts that the hearing officer's determination that he is not entitled to SIBs for the 9th, 10th, and 11th quarters is against the great weight of the evidence. The carrier did not respond to the claimant's cross-appeal.

DECISION

Affirmed, as modified.

It is undisputed that the claimant sustained a compensable injury on _____, and that the claimant received an impairment rating greater than 15% for his compensable injury. The 9th quarter was identified as the period from October 26, 2000, to January 24, 2001; the 10th quarter was identified as the period from January 25 to April 25, 2001; the 11th quarter was identified as the period from April 26 to July 25, 2001; and the 12th quarter was identified as the period from July 26 to October 24, 2001. The parties stipulated that the claimant had cervical surgery on June 7, 2001, and that he has not been released to return to work following his surgery by either his treating doctor or the surgeon who performed the surgery. The hearing officer made findings of fact as to the dates of the relevant qualifying periods, which contain obvious typographical errors in that years are incorrectly stated in each finding. Thus, Findings of Fact Nos. 3, 4, 5, and 6 will be modified to state that the qualifying periods for the 9th, 10th, 11th, and 12th quarters ran from July 14 to October 13, 2000; from October 13, 2000, to January 11, 2001; from January 12 to April 10, 2001; and from April 11 to July 11, 2001, respectively.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the 9th, 10th, and 11th, quarters, but is entitled to SIBs for the 12th quarter. The hearing officer determined that the claimant did not satisfy the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) to establish a total inability to work for the 9th, 10th, and 11th quarters, and that he satisfied those requirements for the 12th quarter, when he underwent cervical surgery. The issues of whether there is a narrative that specifically explains how the injury causes a total inability to work and whether another record shows some ability to work are factual determinations for the hearing officer. The hearing officer was acting within her role as the fact finder in assessing the weight and credibility to be given to the evidence and in determining that the

claimant satisfied his burden of proof with respect to the 12th quarter but not with respect to the 9th, 10th, and 11th quarters. The hearing officer's determinations that the claimant is not entitled to SIBs for the 9th, 10th, and 11th quarters but is entitled to those benefits for the 12th quarter are not so against the great weight of the evidence as to be clearly wrong or manifestly unjust; thus, no sound basis exists for reversing those determinations 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 also asserts error in the hearing officer's determination that the claimant's unemployment in the relevant qualifying periods was a direct result of the claimant's impairment from the compensable injury. We find no merit in this challenge. The hearing officer's direct result determination is sufficiently supported by the evidence that the claimant sustained a serious injury with lasting effects and that he could not reasonably perform the type of work that he was doing at the time of injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995.

As modified to correctly state the dates of the relevant qualifying periods, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** 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:

Michael B. McShane
Appeals Judge

Robert W. Potts
Appeals Judge