

APPEAL NO. 012671
FILED DECEMBER 10, 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 October 31 and November 30, 2000, and on October 1, 2001. The hearing officer held that the appellant's (claimant) compensable injury extended to depression/post traumatic stress syndrome (PTSD) (along with several undisputed injuries) but did not include bilateral carpal tunnel syndrome (CTS) or injuries to the low back and neck. Consistent with this finding, the hearing officer gave presumptive weight to the designated doctor's report on the impairment rating (IR) for permanent whole body impairment of 27% for the compensable injury. He further found that the claimant was not entitled to supplemental income benefits (SIBs) for his first and second quarters of eligibility (which were recomputed based upon the revised IR).

The claimant has appealed and argues that his injury involved more than some burns and depression. He argues that he has proven an inability to work due to his depression. He notes that the great passage of time between the CCH sessions likely caused some of his arguments to be lost. The claimant asks that his IR be restored to 46% in accordance with the amended report of the designated doctor that includes all disputed extent of injury. The respondent (carrier) responds by seeking affirmance on the appealed issues.

DECISION

We affirm the hearing officer's decision in part, but reverse and render the IR and the dates for the quarters of SIBs based upon the revised IR.

The claimant sustained an electrocution injury on _____, and fell back into a 25 foot depression. The carrier accepted thoracic, right ear, right shoulder, and various burn injuries. As pointed out in the comprehensive fact discussion in the Decision and Order, there was a considerable gap in time between the injury and manifestation of the CTS, as well as aspects of the neck and low back conditions. Although the hearing officer had closed the record after the November 2000 CCH, he ordered it reopened to seek clarification from the designated doctor. The result was an examination by a psychologist leading to additional IR from the designated doctor for depression/PTSD. The IR that the hearing officer gave presumptive weight consists of the discrete ratings assigned by the designated doctor in his amended Report of Medical Evaluation (TWCC-69) for depression, thoracic spine, and right ear impairments. Not included were IRs assigned for low back and neck conditions.

A letter from a treating doctor in September 2000 indicated a general opinion that the claimant had total and permanent disability due to his injuries, but this doctor also included neck and low back injuries as part of his consideration.

The Impairment Rating

The hearing officer was correct in combining the aspects of the designated doctor's report relating to the compensable injury; however, he erroneously used four percent as the thoracic IR found by the designated doctor, when actually six percent was the percentage assigned, consisting of two percent for range of motion deficits, two percent compression fracture from Table 49, Section I of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and two percent for six months of documents pain from Table 49, Section II of the AMA. Therefore, based upon the hearing officer's decision and the designated doctor's discrete IRs for the compensable injury, and combination through the combined value tables of the, published by the AMA Guides, the correct IR is 28%. We therefore reverse and render an opinion that the IR is 28%, not 27% in accordance with the designated doctor's report. This results in an additional three weeks of impairment income benefits, causing an adjustment in the dates for the SIBs quarters. In accordance with this, the findings as to the SIBs quarters are revised as follows:

8. The 1st [SIBs] quarter, based on a 28% [IR] and a date of maximum medical improvement (MMI) of July 7, 1998, was from February 16 through May 16, 2000, and the qualifying period for this quarter was from November 4, 1999, through February 2, 2000.

9. The 2nd [SIBs] quarter based on a 28% [IR] and a date of [MMI] of July 7, 1998, was from May 17 through August 15, 2000, and the qualifying period for this quarter was from February 3 through May 3, 2000.

Extent of Injury

The hearing officer has carefully analyzed the medical evidence and did not err in determining the relationship of various later manifested injuries to the original injury. Chronology alone does not establish a causal connection between an accident and a later-diagnosed injury. Texas Workers' Compensation Commission Appeal No. 94231, decided April 8, 1994. The hearing officer did not err in extending the effects of the injury only to depression/PTSD but not the disputed CTS, neck, and low back conditions. Because the case was largely a medical one, and a transcript was made of all sessions of the CCH, we cannot agree that the lapse of time alone prejudiced the claimant's case.

SIBS

As noted by the hearing officer, the claimant did not seek employment because he believed he was not able to work. To fulfill the good faith search for employment requirement for SIBs, the claimant was required to produce a narrative report from a doctor specifically explaining how the injury caused a total inability to work. Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4); there must be no other

record which shows an ability to work. He did not err in finding that such a narrative was not included in the record for these time periods. There was also an independent medical examination report which stated in July 2000 that the claimant's inability to work was largely due to his cervical and lumbar conditions. (Although the hearing officer names two other records as showing an ability to work, we would note that one of these reports from 1998 is too remote to bear on the quarters under consideration).

For the reasons set forth above, the decision of the hearing officer is reversed as to the amount of the IR, and the dates for the SIBs periods, and a decision rendered as stated above. In other respects the decision is affirmed.

The true corporate name of the insurance carrier is **ST. PAUL GUARDIAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge