

APPEAL NO. 020063  
FILED FEBRUARY 26, 2002

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 December 7, 2001, with (hearing officer 1) presiding as hearing officer. An issue of whether the appellant (claimant) was entitled to lifetime income benefits was withdrawn at the start of the CCH by agreement of the claimant and the respondent (carrier). An issue of whether the claimant was entitled to fourth quarter supplemental income benefits (SIBs) was added by agreement of the parties, upon a finding of good cause by hearing officer 1, to the issue of entitlement to third quarter SIBs. Hearing officer 1 determined that the claimant is not entitled to SIBs for either the third or the fourth quarter because she does not meet the threshold requirement of having an impairment rating (IR) of 15% or more. The claimant appeals Findings of Fact Nos. 2, 4, and 7, arguing that she is entitled to SIBs for the second, third, fourth, and fifth quarters; that her 23% IR was stolen from her; that there was no good cause for the 14% IR to become final; and that she is entitled to her quarters of SIBs because she has a 23% impairment. (It is apparent that the claimant is appealing Finding of Fact No. 8, as well as Finding of Fact No. 7, as she refers to "quarters"—plural—when appealing the determinations of the issues in this case.) The carrier responds, arguing that the claimant's submission does not amount to an appeal, or, if it does, it only addresses three of the findings of fact and none of the conclusions, and, in any event, hearing officer 1's decision should be affirmed. A second letter, bearing the same claim number as this case, was received by the Texas Workers' Compensation Commission (Commission) on February 4, 2002. The letter itself adds nothing to the appeal and does not respond to the carrier's response, but it has attached to it three additional documents: a January 22, 2002, letter from (Dr. C); a page from the claimant's medical records, dated April 7, 1999; and a January 17, 2002, letter from the Texas Rehabilitation Commission (TRC) indicating that the TRC would not take an application from the claimant at this time.

DECISION

Affirmed.

It is necessary to briefly summarize the history of this case in order to put the issues into context. The claimant's compensable injury occurred on \_\_\_\_\_. A CCH was held on April 23, 2001, on issues of extent of injury, maximum medical improvement (MMI) date, IR, whether the first certification of MMI and IR became final, whether the carrier waived the right to establish finality of the first IR, and entitlement to SIBs for the first and second quarters. In a Decision and Order dated August 6, 2001, the hearing officer (hearing officer 2), determined that the claimant's compensable injury (bilateral wrists and left ankle) did not extend to or include an injury to the cervical spine. He further determined that the first certification of MMI and IR for the July 1, 1997, compensable injury was from Dr. S, a required medical examination doctor, who certified MMI on April 7, 1999, with a 5% IR. The claimant received a copy of Dr. S's evaluation on May 3, 1999, but did not file

a notice of dispute until September 3, 1999, more than 90 days after receiving notice of the MMI/IR by Dr. S. After the dispute was filed, Dr. H was selected by the Commission to serve as the designated doctor. He evaluated the claimant on February 12, 2000, and determined that she had reached MMI on July 1, 1999, with a 23% IR. His rating included the cervical spine and left ankle, but not the bilateral wrist injury. Hearing officer 2 determined that the carrier waived its right to assert finality of the first MMI/IR by Dr. S because that contention was not raised until more than nine months after the designated doctor filed his report. Hearing officer 2 asked the designated doctor to reevaluate the claimant in view of his determination that the cervical spine was not included in the compensable injury, and because the bilateral wrists were included in the compensable injury but had not been rated. Dr. H reexamined the claimant on June 8, 2001, and provided a revised IR of 14% for the compensable injury. Hearing officer 2 determined that the claimant's IR was 14%; he then determined that the claimant did not meet the SIBs threshold requirement of having an IR of 15% or more and was therefore not entitled to first and second quarter SIBs.

The evidence developed at the current CCH indicated that the claimant appealed the decision rendered by hearing officer 2, but that the Appeals Panel did not issue a written decision by the 30th day after the response was filed with the Commission. Hearing officer 2's decision became final and also became the final decision of the Appeals Panel as provided in Section 410.204(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.5(b) (Rule 143.5(b)). The claimant filed suit in the District Court of Abilene on October 29, 2001. There has not yet been a decision in the lawsuit. The hearing officer for this CCH, hearing officer 1, concluded that the decision from the prior CCH is binding upon her for the duration of the judicial review. We agree. See Section 410.205(b).

Rule 130.102(b) sets out the eligibility requirements for SIBs as follows:

- (b) Eligibility Criteria. An injured employee who has an [IR] of 15% or greater, and who has not commuted any impairment income benefits, is eligible to receive [SIBs] if, during the qualifying period, the employee:
  - (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and
  - (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work.

Hearing officer 1 has correctly applied the law to the facts of this case. It is apparent that the claimant does not meet the threshold requirement for SIBs, as she does not have an IR of 15% or greater. The determination that the claimant is not entitled to SIBs for the third and fourth quarters is amply supported by the evidence of record. As to the claimant's "appeal" regarding the second quarter of SIBs, we note that the prior CCH decided that

issue adversely to the claimant, and the second quarter is not part of this case. The fifth quarter, referred to by the claimant, was also not an issue before this CCH. We understand the claimant's assertions concerning the change of her IR from 23% to 14%, and would reiterate that the original 23% IR from the designated doctor was apparently based on the error by the designated doctor as to what was included in the compensable injury. That needed to be, and was, corrected by the designated doctor during his reexamination of the claimant.

Regarding the new matters attached to the claimant's appeal, we generally do not consider matters presented for the first time on appeal. In view of our resolution in this case, the new matters are deemed not to be relevant to the decision.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **BANKERS STANDARD INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN  
ACE USA  
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200  
IRVING, TEXAS 75063.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Edward Vilano  
Appeals Judge