

APPEAL NO. 021286
FILED JULY 9, 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 was held on April 18, 2002. The hearing officer resolved the disputed issue by concluding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the eighth quarter. The appellant (carrier) appeals, arguing that the determination of the hearing officer is not supported by sufficient evidence or, alternatively, is against the great weight and preponderance of the evidence. The claimant responds, contending that the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.102(d)(4) (Rule 130.102(d)(4)) were met.

DECISION

Reversed and rendered.

The parties stipulated that the qualifying period for the eighth quarter began September 21 and ended December 20, 2001. The claimant contended that he had no ability to work during the qualifying period at issue. Rule 130.102(d)(4) states 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 return to work[.]

We have held that all elements of Rule 130.102(d)(4) must be established in order to prevail under a theory of no ability to work. Texas Worker's Compensation Commission Appeal No. 002428, decided December 1, 2000.

The hearing officer found that the treating doctor's July 20, 2001, report documents why the claimant is unable to work. However, that report was dated over two months prior to the qualifying period and opines that the claimant was totally disabled "during the period of time from November of the year 2000 until February of the following year. . . ." While the treating doctor states that the claimant was not able to "seek" employment during the first quarter of the year 2001, he does not address the time period covered by the qualifying period for the eighth quarter. The report goes on to state that the claimant is progressing nicely and is taking less pain medication than he was previously. Although the report stated that the pain medication the claimant is taking would prohibit him "from working at heights and around dangerous machinery and also affects his mental status to some degree making even driving somewhat difficult for him at times," it failed to explain how the injury caused a *total inability* to work. The finding that the treating doctor's report sufficed as a narrative report which

specifically explains how the injury causes a total inability to work is against the great weight of the evidence, and is reversed. A new finding is rendered that the treating doctor's report of July 20, 2001, does not document why the claimant is unable to work.

Further, the hearing officer found (Finding of Fact No. 8) that "No medical record readable by the Hearing Officer indicated Claimant had an ability to work during the qualifying period." We are somewhat at a loss to understand why the hearing officer considered a typewritten Functional Capacity Evaluation (FCE) and a typewritten report from the carrier's required medical examination (RME) doctor to be "unreadable." In any event, we have no trouble discerning that the RME report states that the claimant was able to perform a very light duty job which allows the claimant to change positions frequently and avoid more than 20 pounds of occasional lifting. The FCE rates the claimant as "capable of sedentary work with intense pain ratings." Both documents qualify as records which show that the claimant is able to return to work. We render a finding that there are other records which show that the claimant is able to return to work.

The evidence, therefore, fails to meet the requirements of Rule 130.102(d)(4) for establishing good faith, and the hearing officer's determination that the claimant is entitled to SIBs for the eighth quarter is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). Accordingly, we reverse the hearing officer's decision and render a new decision that the claimant is not entitled to SIBs for the eighth quarter.

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.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Roy L. Warren
Appeals Judge