

APPEAL NO. 021707  
FILED AUGUST 19, 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 June 4, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income Benefits (SIBs) for the fourth quarter.

The claimant appealed, contending that the hearing officer's decision is against the great weight and preponderance of the evidence and that her evidence did provide a detailed narrative that specifically explains "why she cannot return to work in any capacity." The file does not contain a response from the respondent (carrier).

DECISION

Affirmed

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the fourth quarter. The claimant claimed she had no ability to work during the qualifying period and it is undisputed that she did not work or look for work during the qualifying period. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee as 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.

In evidence is another hearing officer's decision and order denying the claimants entitlement to SIBs for the third quarter on much of the same evidence. That decision was appealed and affirmed by the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 021053 decided June 6, 2002. The hearing officer in this case, as did the other hearing officer for the prior quarter, found that the claimant did not provide a narrative report from a doctor which specifically explained how the claimant's injury caused a total inability to work, and that during the qualifying period the claimant did not attempt in good faith to obtain employment commensurate with her ability to work. The hearing officer concluded that the claimant is not entitled to SIBs for the fourth quarter. As we noted in Appeal No. 021053, we have stated that "the 'narrative' required by Rule 130.102(d)(4) must include a detailed analysis of a claimant's ability to work at any job in relation to the physical restrictions and limitations from the compensable injury." The rule specifically requires a narrative report from a doctor that specifically explains how the injury causes a total inability to work. The hearing officer's finding that the claimant did not provide a narrative report from a doctor that specifically

explained how the injury causes a total inability to work is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

As in Appeal No. 021053 the hearing officer in this case also held that a carrier required medical examination report dated just after the beginning of this qualifying period lacked credibility, specifically giving reasons therefore, and as the prior hearing officer had done, rejected that report as an "other record" which shows the claimant is able to return to work. However, having found that the claimant failed to provide a narrative report from a doctor which specifically explained how the injury causes a total inability to work, the hearing officer did not err in finding that the claimant failed to satisfy all the requirements of Rule 130.102(d)(4).

The decision and order of the hearing officer 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

**THE CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

CONCURRING OPINION:

I find this case troubling, because I believe that the doctor might contend that he has provided a fairly comprehensive narrative. However, the statute requires a search for employment commensurate with the ability to work, and I believe that occasions where no ability is found under our rule should be few and far between. Because the hearing officer believed that one of the doctor's assumptions was not true most of the time, she could disbelieve this letter as a sufficient narrative.

In light of the doctor's stated reasons for determining that the claimant cannot perform employment activities, that she is not receiving or being allowed to receive adequate care, it is worth restating that an injured employee is entitled to medical treatment that is not only reasonable and necessary to treat the injury and its effects, but enhances the ability to return to work. Section 408.012.

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Susan M. Kelley  
Appeals Judge