

APPEAL NO. 022481
FILED NOVEMBER 14, 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 August 26, 2002. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for his first four quarters of eligibility. The appellant (carrier) has appealed, pointing out that there are other records showing an ability to work. The carrier also argues that the claimant's inability to work, if it exists, is due to a psychological condition rather than physical injury. The claimant seeks affirmance.

DECISION

The hearing officer's decision is reversed and remanded.

The claimant, a man in his early 30's at the time of the CCH, fell on _____ . Although he reported the incident to at least one emergency room doctor in September 2001 as involving a "broken" back, his back was not broken. To greatly summarize the medical records, most examining doctors agree that the claimant's objective testing is not consistent with a paralyzing spinal cord injury, but that he has a "conversion disorder" causing him to experience paralysis and loss of sensation. The psychological condition was the basis for the claimant's impairment rating (assigned in December 2000) which resulted in him being eligible for consideration for SIBs. A doctor for the carrier opined in September 2000 that in another three months the claimant could likely do sedentary work. There are no medical reports that charge that the claimant is consciously malingering or acting. There are no medical reports documenting problems with functioning in the claimant's upper extremities.

The claimant's treating doctor appears to stand alone in attributing his condition to a spinal cord injury (his reports do not comment upon the diagnosis of conversion disorder or its effect on the claimant's ability to work). He stated in September 2001 that the claimant was totally bedridden and in October 2001 that the claimant was unable "to sit, stand, or walk" and therefore was unable to look for work. Although the claimant had psychological evaluations early in the course of his injury, as well as a psychiatric evaluation at the end of May 2001, the treating doctor was not aware that this had been done as evidenced by his mid-June 2001 report, in which the treating doctor complains that a psychiatric evaluation was denied by the carrier. The last record from the treating doctor in evidence was a Work Status Report (TWCC-73) dated January 24, 2002, with no narrative but a statement restricting the claimant from work for six months due to "paraplegia and intractable back pain."

In September 2000, a functional capacity evaluation could not be completed due to inconsistency in the claimant's testing. The claimant said that he had done some

yard work for neighbors, including some mowing with a push mower, and received very low pay for this; a surveillance report placed the time frame for this as August 2000. The claimant said that he had taken a turn for the worse when he had a spontaneous return of painful sensation to his legs in September 2001 that occurred during an activity of daily living. (The return of sensation did not result from any new accident.) However, he also testified as of the CCH that he was getting better and in fact was ambulatory at the CCH rather than in wheelchair as earlier medical records indicated he had been. Records from a referral neurosurgeon dated March 2002 reported the claimant as having received 80% pain relief, albeit temporary, from facet injections.

The troublesome aspect of the case in light of medical evidence is that the qualifying periods in issue run from April 2001 through April 2002 (the exact dates are not found for the qualifying periods as opposed to the quarters themselves). The fact that disputes over many quarters of SIBs may be consolidated into a single proceeding does not mean that the hearing officer is required to consider all of the periods as a block. While we have stated that medical evidence from outside of a qualifying period can be considered, the record here indicates that the claimant had changes in his condition well into the second quarter qualifying period and apparently also in the fourth qualifying period and that he also felt he had improved as of the date of the CCH, when he was ambulatory, however limited. There was testimonial evidence that he had actually done some work, even if restricted. Finally, although there are generalized findings as to there being a "narrative" for each quarter explaining how the injury caused a total inability to work, the records considered to be such narratives are not described by the hearing officer in the discussion or findings of fact. We would note that the lack of any records showing an ability to work does not automatically elevate generalized medical reports into narratives meeting the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)).

Although the hearing officer has ostensibly considered each quarter separately, the fact findings are identical and simply track the language of Rule 130.102(d)(4). Because of this, it appears to us that the quarters have not been independently considered by the hearing officer vis à vis the evidence showing a change in condition. We therefore reverse and remand for further consideration and specific evidentiary findings on the narratives for each quarter that the hearing officer considered met the requirements of a narrative as set forth in Rule 130.102(d)(4).

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS 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:

Thomas A. Knapp
Appeals Judge

Veronica Lopez
Appeals Judges