APPEAL NO. 022717
FILED DECEMBER 6, 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 September 17, 2002. With regard to the disputed issues, the hearing officer determined that the appellant's (claimant) compensable (low back) injury of _____, did not extend to and include a left hip and leg injury and that the claimant is not entitled to supplemental income benefits (SIBs) for the 11th quarter.

The claimant appealed both disputed issues, contending that a fall on March 17, 2002, which resulted in a hip fracture, was a direct and natural result of her January 1997 injury and that she is entitled to SIBs based on a total inability to work in any capacity. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed for reasons stated in the decision.

It is undisputed that the claimant was taking stock off of a shelf, missed a rung on a ladder, fell, and sustained a fractured right tibia and low back injury on _____. The claimant had spinal surgery at L5-S1 on April 28, 1998, and a second spinal surgery at L4-5 on September 5, 2000. The claimant was certified at maximum medical improvement (MMI) on January 22, 1999, with a 16% impairment rating (IR). The parties stipulated that the qualifying period for 11th quarter SIBs was from March 10 through June 8, 2002. The claimant testified that she was at her daughter's house when her left leg "gave out" and she fell to the floor, fracturing her left hip. The claimant had hip surgery on March 18, 2002.

The claimant contends that as a result of her 1997 compensable injury, she has "severe lumbar radiculopathy," which resulted in loss of strength in her legs due to neurological failure and caused her to fall and fracture her hip. Both parties and the hearing officer cite Appeals Panel decisions regarding what constitutes a "naturally flowing" or "follow-on" injury. Both the hearing officer and the carrier cite Texas Workers' Compensation Commission Appeal No. 021169, decided June 27, 2002, a somewhat similar case where the injured employee sustained a compensable left knee injury, had surgery, and four and one-half months later fell "at home when her left leg gave out while walking to the bathroom." The hearing officer in that case determined that the later injury was a "direct result" of the compensable injury and the Appeals Panel reversed and rendered a new decision, citing authority, that the later injury "was not a direct and natural result of the original compensable knee injury, rather, it resulted from instability, weakness, or lowered resistance from the compensable injury." That decision cited court and Appeals Panel decisions and the reasoning was followed in Texas Workers' Compensation Commission Appeal No. 022225, decided October 4, 2002. The hearing officer's determination on this issue in the case at hand is affirmed.

Much of the determination regarding SIBs hinged on whether the claimant's fractured hip injury was compensable. Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) and Rule 130.102(d)(4). The hearing officer's determination that the claimant's unemployment was a direct result of the compensable injury has not been appealed. The claimant had been proceeding under a total inability to work theory and it was undisputed that the claimant had not sought work during the first week of the qualifying period before she fell and broke her hip on March 17, 2002. 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 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. The hearing officer found that the claimant had some ability to work during the qualifying period and that a report dated August 24, 2001, from the carrier's required medical examination doctor giving an opinion that the claimant could do sedentary work, provides an "other record" that shows the claimant is able to work in some fashion.

What warrants further comment in this case is that a designated doctor was appointed pursuant to Rule 130.110 to determine the return-to-work dispute during SIBs. For whatever reason, the designated doctor's first report, dated February 21, 2002, only addressed MMI and IR. The Texas Workers' Compensation Commission (Commission) contacted the designated doctor and asked him to comment on the claimant's return-to-work status. In a letter dated April 12, 2002, the designated doctor commented, "I am not able to make a full determination of return to work status without an [functional capacity evaluation] FCE," but further commented that "[b]ased strictly on the physical exam . . . the [claimant] should be able to return to work in a position that does not require bending or lifting." The hearing officer determined that this "opinion carries presumptive weight." It is on this point that we disagree. We note that pursuant to Rule 130.110(a), the presumptive weight afforded the designated doctor's report shall begin on the date the report is received by the Commission and will continue until amended based on newly provided medical or physical evidence. Rule 130.110(k) requires the designated doctor to file his report with the Commission "not later than the seventh day after the completion of the examination of the injured employee." The designated doctor's original report, dated February 21, 2002, would have presumptive weight but did not, for whatever reason, address the claimant's ability to return to work. The follow-up letter clearly states that the doctor believes an FCE is required and further, the report was not sent to the Commission within seven days of the exam date. The designated doctor's April 12, 2002, report does not have presumptive weight; however, it may be considered as an "other" record that shows the claimant is able to return to work at least as of April 12, 2002. There is sufficient evidence to support the hearing officer's determination that the claimant is not entitled to SIBs for the 11th quarter.

After review of the record before us and the complained-of determinations, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **FIREMAN'S FUND INSURANCE COMPANY** and the name and address of its registered agent for service of process is

DOROTHY C. LEADERER
1999 BRYAN STREET
DALLAS, TEXAS 75201.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Margaret L. Turner
Appeals Judge