

APPEAL NO. 022939
FILED DECEMBER 17, 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 October 16, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter. The claimant appeals the determination on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed in part, reversed and rendered in part.

It is undisputed that the claimant worked as an assistant farm manager for the employer. His duties included grass production, maintaining and repairing farm equipment, and other medium to heavy-duty work. The parties stipulated that the claimant sustained compensable injuries to his right knee and low back on _____. The claimant's low back injury was described by his neurosurgeon as lumbar spondylosis. The claimant's treating doctor indicated that the claimant is now capable of only sedentary work, "but even sitting for periods of time causes him a great deal of discomfort." Later, in response to the question of whether the claimant is totally disabled from any employment whatsoever including a sedentary position, the treating doctor answered "Yes." The carrier's required medical examination doctor agreed that the claimant could not return to doing heavy manual labor but opined that he would be capable of performing sedentary work with no repetitive bending, no lifting greater than 20-pounds, no stooping or crawling, and no climbing ladders.

At issue is whether the claimant had a total inability to work during the qualifying period and whether the claimant's unemployment was a direct result of the impairment from the compensable injury. See Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer determined that the claimant had an ability to perform sedentary work and did not make a good faith effort to obtain employment commensurate with his ability to work during the qualifying period. In view of the evidence presented, we cannot conclude that such determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). However, the hearing officer erred in determining that the claimant's unemployment was not a direct result of his impairment from the compensable injury.

We have said that "direct result" may be established by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the

type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. Despite the evidence above, the hearing officer found that the claimant's unemployment during the qualifying period was the result "primarily of his obesity and other ordinary diseases of life not related to his impairment from his compensable injury." The hearing officer relied on a report from the carrier's peer review doctor in making his determination. The peer review doctor's report was intended to address the medical necessity of a handicap accessible van and motorized scooter prescribed by the claimant's treating doctor. The report provides, in part:

My review would indicate that this patient has a variety of medical problems other than the work injury to the right knee. He is primarily affected by his morbid obesity, which was pre-existing. He apparently has gained some weight subsequent to the work injury, but from my reading of the medical record, he was morbidly obese at the time of injury. Additionally, his pain and perception in the lower extremity and feet appears to be unrelated to the work injury and is either from a sensory polyneuropathy or from involvement of the spinal cord at the thoracic level. The thoracic area is not related to the original work injury. He additionally has mobility problems at the hip level, most likely related to degenerative arthritic changes secondary to his morbid obesity. The work injury which primarily affected the area of the knee is not deemed to be likely responsible for this patient requiring the use of a scooter and vehicle for transporting the scooter. The low back is not felt to be a limiting factor for walking. As the patient has a 20-pound lift restriction, he would be unable to lift the scooter into a vehicle for transport. Any vehicle that was obtained would most likely be required to be a handicap accessible van with ramp entrance, so that a scooter could be driven into the van and minimal lift on the part of the patient would be required.

It is my opinion that the necessity for a scooter and van is not related to the knee injury and secondary low back symptoms from the work injury of _____, but in all medical probability is related to his morbid obesity, and ordinary disease of life, as well as degenerative joint disease secondary to age and obesity, also an ordinary disease of life and finally, related to the sensory neuropathy affecting both pain and sensibility in the use of the feet and legs, not related to the work injury of _____.

In our view, the report does not support the inference that the claimant's impairment from the compensable injury was not a cause of his unemployment. Additionally, such an inference is inconsistent with the hearing officer's finding of fact that the claimant had the ability to work "in a sedentary capacity during the qualifying period," which implies that the claimant was unable to perform the type of work being done at the time of injury. Accordingly, we reverse the hearing officer's "direct result"

determination and render a decision that the claimant's unemployment was a direct result of his impairment from the compensable injury.

The hearing officer's "direct result" determination is reversed and rendered. Since the claimant failed to satisfy the "good faith" criterion, however, the hearing officer's decision and order that the claimant is not entitled to third quarter SIBs is affirmed.

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

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge