

APPEAL NO. 030378  
FILED APRIL 7, 2003

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 January 23, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 12th quarter based on a total inability to work in any capacity.

The appellant (carrier) appeals, contending that the record included a report that the claimant could perform sedentary work. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

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 carrier appeals the hearing officer's determinations that the claimant met the good faith job search requirements of Section 408.142(a)(4) and Rule 130.102(b)(2). The hearing officer's determination on the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1) has not been appealed. The parties stipulated that the qualifying period at issue was from May 23 through August 21, 2002.

The claimant seeks to show that he has made a good faith effort to obtain employment commensurate with his ability to work because he had a total inability to work. 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 no ability to work and that the medical reports of the treating doctor provide a narrative that shows that the claimant is unable to perform any work in any capacity. That determination is supported by sufficient evidence.

The hearing officer also discusses a report dated June 24, 2002, from a carrier-required medical examination (RME) doctor. That report documents the claimant's clinical history, discusses the doctor's examination, and gives a diagnosis of "Failed low back syndrome." The RME doctor then concludes:

In terms of work, he could do no more than sedentary work. He cannot do any appreciable lifting or appreciable walking at work. He probably still needs to be managed with anti-inflammatory medications and judicious

use of pain medication. In terms of additional treatment in this gentleman, I feel a spinal cord stimulator would be indicated. I seen [sic] no need for removal of the hardware. I would let him work sedentary with no lifting more than 10 pounds and certainly no appreciable walking at work.

Attached to the narrative report is a partially completed Work Status Report (TWCC-73). The hearing officer comments on those reports stating:

A sedentary job requires attendance at work, sitting, and organized thought. Based on Claimant's use of narcotic drugs, his constant pain, and his limited ability to sit or stand, it is not credible that Claimant could perform any job in a real world setting. [The RME doctor's] TWCC-73 did not even limit the number of hours that Claimant could work. I find [the RME doctor's] narrative more convincing than the TWCC-73, where it said that he could perform **no more than** sedentary work. Claimant passes the "fog a mirror" test, but there is no record that credibly shows a work ability. [Emphasis in the original.]

The hearing officer then finds that the RME doctor's report does "not credibly show any ability to work."

In Texas Workers' Compensation Commission Appeal No. 020041-s, decided February 28, 2002, citing Texas Workers' Compensation Commission Appeal No. 002196, decided October 24, 2000, the Appeals Panel stated that "in cases where a total inability to work is asserted and there are other records which on their face appear to show an ability to work, the hearing officer is not at liberty to simply reject those records as not credible without explanation or support in the record." In this case the hearing officer appeared to find fault with the partially completed TWCC-73 and attributed the defects in that form to the RME doctor's six-page narrative, while agreeing that the narrative said that the claimant "could perform **no more than** sedentary work." (Emphasis in the original.) While the hearing officer perhaps successfully rebutted the TWCC-73 as a record that shows an ability to work, the hearing officer seems to say that the narrative report is not credible apparently because it does not show an ability to perform a "job in a real world setting" and therefore does "not credibly show any ability to work." We hold that the hearing officer's decision failed to adequately explain why the RME doctor's report was found to be not credible.

We reverse the hearing officer's decision that the claimant is entitled to SIBs and render a new decision that the claimant is not entitled to SIBs for the 12th quarter.

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

**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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Daniel R. Barry  
Appeals Judge

DISSENTING OPINION:

I respectfully dissent. I would affirm the hearing officer's decision because I believe the hearing officer's decision is supported by the evidence.

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Robert W. Potts  
Appeals Judge