

APPEAL NO. 030827
FILED MAY 13, 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 March 17, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the sixth compensable quarter. The appellant (self-insured) appeals this determination. The claimant urges affirmance.

DECISION

Affirmed in part, reversed and rendered in part.

Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

An employee is entitled to [SIBs] if on the expiration of the impairment income benefit [IIBs] period computed under Section 408.121(a)(1) the employee:

- (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;
- (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
- (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
- (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

Rule 130.102(d)(4) states that the "good faith" criterion will be met 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 self-insured asserts that the hearing officer erred in determining that during the qualifying period corresponding to the sixth quarter the claimant's unemployment was a direct result of the impairment from the compensable injury. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(c) (Rule 130.102(c)) states that an "injured employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the

compensable injury is a cause of the reduced earnings.” We have stated that a finding of "direct result" is sufficiently supported 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. Whether the claimant satisfied the direct result requirement for SIBs entitlement was a factual question for the hearing officer to resolve. As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. Nothing in our review of the record indicates that the hearing officer's direct result findings are 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, 176 (Tex. 1986). Findings of Fact Nos. 2 and 5 and affirmed.

The self-insured additionally argues that the hearing officer erred in determining that the report dated November 5, 2002, from the claimant's treating doctor, Dr. G, was a sufficient narrative as required by Rule 130.102(d)(4). The report in question is a one-page sheet stating that "the [claimant] was unable to work in any capacity during the period specified above, due to the following effects and conditions, which resulted from the [claimant's] work-related injury". The report contains a list of various effects and conditions with the following checked with regard to the claimant: pain, muscle spasms, swelling, loss of sensation, disc herniation or lesion with residual symptoms, and use of medications, which may cause drowsiness or may otherwise interfere with ability to work. Given that Dr. G's report fails to specifically explain how that the checked effects and conditions, which resulted from the compensable injury, caused a total inability to work, the report is insufficient to constitute a narrative as required by Rule 130.104(d)(4). Accordingly, we reverse Finding of Fact No. 3 and Conclusion of Law No. 3 and render a new decision that the claimant did not provide a narrative which specifically explains how the compensable injury causes a total inability to work during the qualifying period in question and, consequently, she is not entitled to SIBs for the sixth quarter.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**LJ
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Chris Cowan
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

DISSENTING OPINION

I respectfully dissent. I believe there is sufficient evidence to support the hearing officer's decision.

Robert W. Potts
Appeals Judge