

APPEAL NO. 031414  
FILED JULY 18, 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 May 15, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 10th, 11th, and 12th quarters. The claimant appeals these determinations on sufficiency of the evidence grounds. No response was filed.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant attached documents to his appeal which were not admitted into evidence at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See generally Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). In determining whether new evidence submitted with an appeal requires remand for further consideration, the Appeals Panel considers whether the evidence came to the knowledge of the party after the hearing, whether it is cumulative of other evidence of record, whether it was not offered at the hearing due to a lack of diligence, and whether it is so material that it would probably result in a different decision. See Texas Workers' Compensation Commission Appeal No. 93536, decided August 12, 1993. Upon our review, we cannot agree that the evidence meets the requirements of newly discovered evidence, in that the claimant did not show that the new evidence submitted for the first time on appeal could not have been obtained prior to the hearing or that its inclusion in the record would probably result in a different decision. The evidence, therefore, does not meet the standard for newly discovered evidence and will not be considered.

**GOOD FAITH EFFORT**

The hearing officer did not err in determining that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) establish the requirements for entitlement to SIBs. The claimant contends that he met the good faith SIBs requirements, under Rule 130.102(d)(4), because he had no ability to work as a result of his compensable injury during the qualifying periods for the 10th, 11th, and 12th quarters. 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 considered the evidence and found that the claimant did not meet the requirements of Rule 130.102(d)(4), i.e., that the claimant did not provide a narrative report which specifically

explained how the injury caused a total inability to work, and that another record showed that the claimant had the ability to perform sedentary work during the qualifying periods. In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's 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).

We note that this case involved the appointment of a designated doctor, under Section 408.151 and Rule 130.110, regarding the claimant's ability to return to work. Pursuant to Rule 130.110, the designated doctor's report is afforded presumptive weight from the time that the Texas Workers' Compensation Commission (Commission) receives the report. Although the designated doctor's report is dated December 13, 2002, during the 12th quarter qualifying period, there is no evidence that the Commission received that report during the qualifying period. The report, therefore, is not entitled to presumptive weight. Notwithstanding, the hearing officer could consider the designated doctor's report as another record which shows that the claimant had some ability to work.

### **DIRECT RESULT**

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. It is undisputed that the claimant was an oil field worker performing heavy manual labor at the time of his injury. As indicated above, the hearing officer essentially found that the claimant was capable of performing sedentary work during the qualifying periods. The hearing officer's determination that the claimant's unemployment is not a direct result of the impairment from the compensable injury, therefore, is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*. 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 10th, 11th, and 12th quarter SIBs is affirmed.

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

**CLARENDON NATIONAL INSURANCE COMPANY  
UNITED STATES CORPORATION COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Chris Cowan  
Appeals Judge