APPEAL NO. 031652
FILED AUGUST 8, 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 (CCH) was originally held on August 26, 2002. The Appeals Panel in Texas Workers' Compensation Commission Appeal No. 022481, decided November 14, 2002, reversed and remanded the hearing officer's decision on entitlement to supplemental income benefits (SIBs) on a total inability to work basis for the first through fourth quarters "for further consideration and specific evidentiary findings on the narratives for each quarter that the hearing officer considered met the requirements of a narrative as set forth in [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4))]."

The hearing officer conducted a CCH on remand on May 15, 2003. The hearing officer determined, contrary to her original decision, that in none of the four quarters was there a narrative report from a doctor which specifically explains how the claimant's injury caused a total inability to work and therefore the claimant had failed to make a good faith effort "to obtain and retain employment" commensurate with his ability to work.

The claimant appealed setting out the background of his injury, rebutting some of the carrier's arguments at the CCHs and citing the hearing officer's favorable decision in the original CCH. The claimant also specifically identified reports, which he believed supported his contention that he had a total inability to work in any capacity during the relevant qualifying periods. The carrier responded, urging affirmance.

DECISION

Affirmed

The background facts and reason for our remand were discussed in Appeal No. 022481, *supra*, and need not be repeated here. In the CCH on remand the parties stipulated that the qualifying period for the first quarter was from April 16 through July 15, 2001; the qualifying period for the second quarter was from July 16 through October 14, 2001; the qualifying period for the third quarter was from October 15, 2001, through January 13, 2002; and the qualifying period for the fourth quarter was from January 14 through April 14, 2002.

One of the ways the statutory requirement of a good faith effort to obtain employment can be achieved is to comply with the requirements of Rule 130.102(d)(4) where a total inability to work is alleged. One of the requirements in Rule 130.102(d)(4) is the requirement for a narrative report from a doctor which specifically explains how the injury causes a total inability to work. In Appeal No. 022481, while there was a substantial amount of medical evidence, the hearing officer only made a generalized

finding that there was such a narrative for each qualifying period and simply tracked the language of Rule 130.102(d)(4).

The claimant, in his appeal and at the CCH on remand, for the first quarter qualifying period referenced reports dated January 31, 2001, and June 15, 2001, from Dr. B, the treating doctor, as the narrative that specifically explains how the injury causes a total inability to work. In those reports, Dr. B states that the claimant "remains paraplegic and is nursing home bound," that the claimant "still has paraplegia," and that the claimant has an "inability to stand or walk." The hearing officer, in her original decision noted that at the time of the CCH the claimant was ambulatory, although he limped and had trouble sitting, and as the carrier notes, there is no evidence that the claimant ever was in a nursing home. Similarly for the second quarter qualifying period the claimant cites reports dated September 18, 20, and 25, and October 3, 2001, as having the narrative that specifically explains the inability to work. In all of these reports Dr. B states that the claimant "is paraplegic" or "is still paraplegic" and was unable to walk, a fact which is clearly incorrect by the hearing officer's account that the claimant was able to ambulate with a cane, at least at the time of the first CCH. The claimant identified medical reports of Dr. S as the specific narrative for the third quarter qualifying period; however, those reports detail only clinical treatment and do not address the ability to work in any capacity. For the fourth quarter qualifying period the claimant references a report dated January 24, 2002, from Dr. B in which Dr. B notes "back pain and leg pain" with "pain worsening when the claimant transfers from wheelchair to chair." That report also states that the claimant "still has paraplegia at the T12 level." There is some evidence that the claimant had been doing some work mowing a lawn and watering in 2000, apparently had worsening of condition in September 2001 (the paraplegia), and subsequently an improvement of his condition by August 2002 where he was able to ambulate with the use of a cane. Although the hearing officer comments that the claimant was doing some lawn work in Fall 2000, had some kind of incident on September 2, 2001, and the claimant was able to walk with a brace and cane in January 2002, as we stated in Appeal No. 022481, *supra*, the quarters did not appear to have been considered vis à vis evidence of a change of condition.

Under the circumstances we conclude that the hearing officer's reconsideration of the evidence and the determination that the evidence did not contain a narrative report from a doctor which specifically explains how the compensable injury causes a total inability to work is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

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

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

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Veronica Lopez-Ruberto
Appeals Judge

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Robert W. Potts
Appeals Judge