

APPEAL NO. 031728  
FILED AUGUST 20, 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 June 4, 2003. The hearing officer determined that respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter, but that he is not entitled to SIBs for the second through fourth quarters. Carrier appealed the determination that claimant is entitled to SIBs for the first quarter contending that claimant did not have an adequate narrative to prove he had no ability to work during the qualifying period. Carrier appeals the determination regarding good faith, but does not appeal the determination regarding direct result. The hearing officer's determinations regarding the second through fourth quarters have not been appealed. The file does not contain a response from claimant.

DECISION

We reverse and remand.

Carrier contends the hearing officer erred in determining that claimant had no ability to work at all during the qualifying period for the first quarter and that he is entitled to SIBs for that quarter. There was evidence that claimant was injured on \_\_\_\_\_, when his left lower extremity was crushed between a trailer and a tractor causing massive soft tissue damage and open fractures. Claimant said he underwent several surgeries to his leg. In an April 2, 2001, report written six months before the qualifying period, Dr. F said claimant is "relatively weak as he has not been able to get to physical therapy." Apparently claimant's condition began to deteriorate because in an August 16, 2001, letter, Dr. F said claimant's "leg is . . . functioning as an amputation and he still has a reasonable likelihood of . . . amputation . . . . [H]e appears to be having some implant failure and to be developing a nonunion of his fracture. For this reason his left lower extremity continues to function as basically an amputation." Claimant underwent surgery to repair the nonunion during the qualifying period, on November 26, 2001. In a December 18, 2001, report, Dr. F noted that claimant was being treated post-operatively for an antibiotic resistant staph infection. A progress note from Dr. F indicated that the intravenous line for antibiotic administration was removed on January 15, 2002. In a September 17, 2002, letter written about one year after the surgery Dr. F said claimant "is deemed unable to work at any type job for the period beginning 10/27/02 and ending on 1/25/03."<sup>1</sup>

In a March 24, 2003, report, Dr. F said:

There has been some question as to [claimant] being disabled from October 2001 to October 2002 . . . . [I]n August of 2001, x-rays of his leg

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<sup>1</sup> From the date of the letter, this appears to contain a typographical error. Presumably Dr. F meant that claimant could not work at all beginning in 2001 and not October 2002, which would be a future date.

showed that the plate was starting to come off the bone. By November 9, 2001, this in fact had occurred and the patient had a persistent nonunion. He underwent surgery for that nonunion in late November 2001. Because of significant bone disease he has had slow recovery with a slow increase in function through the Fall of 2002. He was initially fairly limited in his weight bearing for medical reasons and then secondary to the lack of strength. He therefore was unable to work from October of 2001 through October of 2002.

We agree with carrier that the August 16, 2001, letter from Dr. F and the November 26, 2001, operative report do not constitute an adequate narrative, either alone or combined. We reverse the hearing officer's determinations regarding adequacy of the narrative, ability to work, good faith, and SIBs entitlement for the first quarter and remand the case to the hearing officer for reconsideration. On remand, the hearing officer should reconsider these issues and make fact findings regarding whether these two reports along with other reports from Dr. F in any combination would constitute an adequate narrative in this case. We remand because the hearing officer specifically named two documents as narratives and neither of them discusses the ability to work. It appears that perhaps these documents were named in error. Rule 130.102(d)(4) requires a narrative that "specifically explains" how the injury causes a total inability to work. Rather than sift through the evidence and make fact findings regarding the credibility of the evidence, we remand for a fact finding regarding whether there is such a narrative in the fact finder's view.

We reverse the hearing officer's decision and order and remand this case for proceedings consistent with this decision. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

According to information provided by carrier, 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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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

DISSENTING OPINION:

I dissent. I fail to appreciate the need of the majority to remand this case back to the hearing officer for her to further explain the medical evidence, which is before us in the record of this case. It appears to me that if there is sufficient medical evidence in the record to support a finding that there is medical narrative which specifically explains the claimant's inability to work during the qualifying period. The case may be affirmed under the doctrine that a hearing officer's decision may be affirmed under any theory which is supported by the evidence in the record, a proposition which the Appeals Panel has relied upon numerous times.

I think that judging whether or not the medical evidence specifically explains an inability to work is certainly affected by the medical context. If a doctor is expressing the opinion that a bunion prevents a claimant from working at all, I think a great deal of explanation would be required to justify such an opinion, if it could ever be justified. On the other hand, if a claimant were to be in coma throughout the qualifying period, I think a notation stating "claimant comatose" could suffice. The context of the present case is that the claimant had implant failure resulting in nonunion of his fracture which resulted in his lower left extremity to function basically as an amputation requiring surgery during the qualifying period. The hearing officer explained her rationale for finding sufficient medical narrative to prove no ability to work when she stated in the portion of decision labeled "Statement of the Evidence" as follows:

With respect to the 1st quarter qualifying period, from 10-27-01, through 01-25-02, there is credible medical evidence that Claimant had a total inability to work due to his compensable injury and his resultant impairment. In fact, documented medical evidence (See Clmt. Ex. 13) reflects that on 11-26-01, Claimant underwent surgery to remove a left tibial DCP plate, with multiple broken screws. [Dr. F], the surgeon noted, "This implant has failed and he has multiple broken screws. This tibia has a progressive nonunion with a poor alignment."

Prior to the 11-26-01 surgical procedure, in an August 16, 2001 letter, [Dr. F] wrote that Claimant was having "some implant failure and to be redeveloping a nonunion of his fracture. For this reason his left lower extremity continues to function as basically as amputation."

There is sufficient medical evidence including medical narrative from [Dr. F] that explains why Claimant had no ability to work during the 1st quarter qualifying period.

Medical reports, particularly those by competent and honest medical providers, are not generally expressed in the form of liturgy, magic words, or incantations. They often rely upon the medical context for their full meaning. I believe that the medical context in the present case gives clear meaning to Dr. F's opinion that the claimant was unable to work during the qualifying period for the first quarter and why this was so. In the past, when the Appeals Panel has veered into the realm of requiring special medical evidence or particular wording of medical evidence, in my opinion, we have generally created bad law and encouraged bad medicine. I think rather than applying mindless literalism to the reading of the medical evidence, it is better to read such evidence in its context giving it reasonable inferences. This practice would appear to me to comport to the underlying liberal interpretation that courts have generally given to the workers' compensation law.

I would simply affirm the decision of the hearing officer.

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Gary L. Kilgore  
Appeals Judge