

APPEAL NO. 031789  
FILED AUGUST 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 June 11, 2003. The hearing officer resolved the disputed issues by deciding that: (1) the appellant/cross-respondent's (claimant) compensable injury does not extend to or include a psychiatric or mental disorder but does extend to include the personality disorder of Dependent Personality Disorder; (2) that the claimant's compensable injury also extends to include his left knee and left shoulder and their current medical conditions; (3) that the compensable injury does not extend to include the current conditions of the claimant's left wrist and low back; (4) that the claimant is not entitled to supplemental income benefits (SIBs) for the 16th, 17th, 18th, or 19th quarters; and (5) that the respondent/cross-appellant (carrier) is relieved of liability to pay SIBs because the claimant did not timely file an application for [SIBs] (TWCC-52) for any of the quarters at issue. The claimant appealed, disputing the determinations that he had post-traumatic stress disorder (PTSD) from 1995 to 1997 as a result of his compensable injury, but has not suffered from that disorder since 1998; that he does not have major depression as a psychiatric disorder; that the compensable injury does not extend to include the left wrist and low back; that he is not entitled to SIBs for the 16th through the 19th quarters; and that the carrier is relieved of liability to pay SIBs because the claimant did not timely file a TWCC-52 for the quarters at issue. The carrier responded, urging affirmance of the disputed issues. The carrier appealed, arguing that the hearing officer incorrectly added the issue of and decided that the claimant's compensable injury extended to include Dependent Personality Disorder and that the hearing officer incorrectly decided that the claimant's current left knee and left shoulder problems are related to the compensable injury. The appeal file does not contain a response from the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

**TIMELY FILING OF SIBS APPLICATION**

It was undisputed that the claimant filled out the TWCC-52s for the quarters at issue on March 18, 2003, and that the TWCC-52s for the 16th, 17th, 18th, and 19th quarters were filed with the Texas Workers' Compensation Commission (Commission) on March 21, 2003. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.105 (Rule 130.105) provides that "an injured employee who does not timely file an Application for [SIBs] with the insurance carrier shall not receive [SIBs] for the period of time between the beginning date of the quarter and the date on which the form was received by the insurance carrier. . . ." The TWCC-52s at issue were all dated by the claimant after the expiration of the relevant qualifying periods. The hearing officer was persuaded that the carrier provided the claimant with a TWCC-52 for the 16th quarter on March 26, 2002.

We conclude that the hearing officer's determinations that the carrier is relieved of liability for the 16th through the 19th quarters are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Under Rule 130.104(b), the carrier is required to send a TWCC-52 for a subsequent quarter with either the first payment for a quarter of SIBs to which the claimant is determined to be entitled or with the carrier's determination of nonentitlement for that quarter. Thus, the claimant would have had to apply for 16th quarter SIBs in order for the carrier to be required to send a TWCC-52 for the 17th quarter and would have had to apply for the 17th quarter to prompt the carrier's obligation to provide the TWCC-52 for the 18th quarter and would have to apply for the 18th quarter to prompt the carrier's obligation to provide the TWCC-52 for the 19th quarter. Because we have affirmed the determination that the carrier is relieved of liability to pay SIBs because the claimant did not timely file any TWCC-52 application at any time in each of the quarters at issue, we do not need to further address the appealed issue of entitlement to SIBs on the merits.

### **DEPENDENT PERSONALITY DISORDER**

We next address the carrier's contention that the hearing officer erred when he added the issue of whether the compensable injury extends to include Dependent Personality Disorder. From the testimony we conclude that the issue of whether the claimant's compensable injury extends to include Dependent Personality Disorder was tried by consent. In this case, given the medical evidence and testimony, and argument from the carrier on appeal, it cannot be said that the carrier did not consider whether the compensable injury extended to include Dependent Personality Disorder. Further, given the state of the record and the hearing officer's determination that compensable injury did extend to include Dependent Personality Disorder, it would be a senseless misuse of Commission resources to force the claimant to file another dispute and relitigate an issue that has been essentially tried by consent.

### **EXTENT OF INJURY**

Both the claimant and the carrier dispute the unfavorable determinations regarding extent of injury. Extent of injury is a factual question for the fact finder to resolve. Conflicting evidence was presented on this issue. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The evidence supports the hearing officer's factual determinations that the compensable injury does not extend to include the current conditions of the claimant's left wrist and low back as

well as the hearing officer's factual determinations that the compensable injury extends to and includes the claimant's left knee and left shoulder and their current conditions as well as the personality disorder of Dependent Personality Disorder. However, the hearing officer specifically found that "the claimant had [PTSD] from 1995 to 1997 as a result of his compensable injury, but has not suffered from that disorder since 1998." The issue before the hearing officer was in part whether the compensable injury of \_\_\_\_\_, extends to include PTSD. The hearing officer specifically found that it did and it was error for him then to conclude in Conclusion of Law No. 2 that it did not. We reverse the hearing officer's determination that the compensable injury did not extend to include PTSD and render a decision that the compensable injury did extend to include PTSD. The determination of what "health care is reasonably required by the nature of the injury" is a matter for the Medical Review Division of the Commission. Section 413.031(a); Rule 133.305.

For the reasons stated above we reverse the hearing officer's determination that the compensable injury did not extend to include PTSD and render a new determination that the compensable injury includes PTSD. We affirm the decision that the carrier is relieved of liability to pay SIBs because the claimant failed to timely file TWCC-52s; that the compensable injury does not extend to major depression or the current condition of the claimant's left wrist and low back; and that the compensable injury extends to and includes dependent personality disorder and injuries to and current medical conditions of the claimant's left knee and left shoulder.

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

**CT CORPORATE SYSTEMS  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Chris Cowan  
Appeals Judge