

APPEAL NO. 033152
FILED JANUARY 16, 2004

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 held on October 30, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fifth quarter, June 4 through September 2, 2003. The appellant (carrier) appealed, arguing that the hearing officer did not correctly apply the applicable statute and administrative rule and that the determination of entitlement was against the great weight and preponderance of the evidence. The claimant responded, contending that the challenged determination of SIBs entitlement was supported by sufficient evidence and should be affirmed.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The parties stipulated that the qualifying period for the fifth quarter was from February 20 through May 21, 2003; that the claimant sustained a compensable neck and right shoulder injury on _____; that the claimant had a 27% impairment rating; and that impairment income benefits were not commuted. The finding that the claimant's unemployment was a direct result of his impairment from the compensable injury was not disputed. At issue is the requirement of Section 408.142(a)(4) and Rule 130.102(b)(2) that the claimant has made a good faith effort to obtain employment commensurate with his ability to work. The claimant contended that he was entitled to SIBs for the fifth quarter on the basis that he had a total inability to work in the relevant qualifying period.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work 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.

On appeal, the carrier asserts that the hearing officer erred in determining that the claimant provided a sufficient narrative report as required by Rule 130.102(d)(4), because the hearing officer "cobbled together a series of reports..." to derive a narrative; that the records relied upon to form a narrative are simply a recitation of medical symptoms; and that the records do not indicate that the claimant's inability to work is assessed with regard to employment generally and not just the job held at the time of the injury. The carrier additionally asserts that there are "other records" which

show that the claimant is able to return to work in some capacity, referencing two functional capacity evaluations (FCE).

We have held that the reports from different doctors cannot be read together to create a narrative report. The narrative report must come from one doctor. Texas Workers' Compensation Commission Appeal No. 011152, decided July 16, 2001. In Texas Workers' Compensation Commission Appeal No. 002724, decided January 5, 2001, we stated that in determining whether the requirements of Rule 130.102(d)(4) for a doctor's narrative report are met, the following will be considered: amendments; supplements, including CCH testimony from the doctor; information incorporated in the report by reference; or information from a doctor's medical records in evidence that can be reasonably incorporated in the doctor's narrative report by inference based on some connection between the report and the information in the medical records. Our review of the record indicates that the hearing officer could have determined that the "narrative reports" of Dr. C were sufficient to constitute a narrative report under Rule 130.102(d)(4).

In cases where a total inability to work is asserted and there are other records which on their face appear to show an ability to work, the hearing officer is not at liberty to simply reject the records as not credible without explanation or support in the record. Texas Workers' Compensation Commission Appeal No. 020041-s, decided February 28, 2002. However, "[t]he mere existence of a medical report stating the claimant had an ability to work alone does not mandate that a hearing officer find that other records showed an ability to work. The hearing officer still may look at the evidence and determine that it failed to show this." Texas Workers' Compensation Commission Appeal No. 000302, decided March 27, 2000. The hearing officer noted that neither of the two FCEs in evidence takes into consideration the impact of the claimant's medications on his ability to function in the workplace and both tests reflect that the claimant has either no ability or an undetermined ability to perform many basic work activities. We cannot agree that the hearing officer erred in finding that no other records credibly show that the claimant could have actually returned to work between February 20 and May 21, 2003, given his condition due to the _____, injury and the medications he was taking for the condition.

A finding of no ability to work is a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and resolves the conflicts and inconsistencies in the evidence including the medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record indicates that the hearing officer's SIBs determinations 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).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION** for **Reliance National Insurance Company** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge