

APPEAL NO. 033315  
FILED FEBRUARY 17, 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 was held on October 7 and November 19, 2003. The hearing officer determined that appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 13th, 14th, and 15th quarters. Claimant appealed the determinations regarding direct result and SIBs entitlement on sufficiency grounds. The hearing officer's determination regarding good faith, which was in claimant's favor, was not appealed. The file does not contain a response from respondent (carrier).

DECISION

We reverse and render.

The sole issue before us concerns direct result. The qualifying periods in question were from September 18, 2002, through June 17, 2003. Claimant testified that she fractured her right foot when she stepped down from a malfunctioning elevator. She said that she has had an ability to work, but that she has not been able to return to her former job because of pain in her foot. She testified that her former job involved constant walking. Claimant said that in the summer of 2003, she worked temporarily in a seasonal position at an outdoor center and that she acted as a safety monitor to help watch the children who came there. Claimant said she is unable to drive very much because of the narcotic medications she takes.

In a June 13, 2002, letter to the carrier, Dr. X stated that claimant did not have significant leg atrophy. He said: (1) claimant's ankle range of motion was fairly normal; (2) claimant had a fairly normal gait though it was "wide based"; (3) he saw no evidence of reflex sympathetic dystrophy (RSD); (4) claimant may return to unrestricted work; and (5) claimant "may need some Ultracet and perhaps minimal use of Vicodin and perhaps a muscle relaxant." Dr. X's report was somewhat ambiguous in that he said, "I would expect [RSD]." Additionally, after his discussion of his examination, under diagnosis, he wrote, "causalgia/reflex sympathetic dystrophy after foot surgery, in 1997." Therefore, it appears that Dr. X believed that, although claimant did not currently have signs of RSD, she had RSD or causalgia at one time. In a March 31, 2003, letter, signed by a physician's assistant and by Dr. S, who treated claimant, it stated that: (1) claimant has developed RSD in the right foot and ankle; (2) claimant achieved pain relief from a stimulator implant, but it had to be removed due to infection; (3) claimant takes Soma for muscle spasms, Restoril for sleep, and Vicodin and Stadol for pain; (4) claimant finds it difficult to wear regular shoes; (5) claimant has difficulty driving because her foot becomes numb; and (6) claimant will not be able to return to any work because of her disability.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(c) (Rule 130.102(c)) states that an injured employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings. The hearing officer determined that claimant's underemployment during the qualifying periods in question was not a direct result of her impairment. The hearing officer stated that, "although the medical records reflect a serious injury in 1997, the credible objective clinical findings per Dr. X do not support any lasting effects in late 2002 and 2003." The hearing officer stated that claimant's claim that she had trouble walking was not substantiated by the credible medical records.

An injured employee need not establish that the impairment is the only cause of the unemployment or underemployment but only that it is a cause. The direct result requirement is "sufficiently supported by evidence that an injured employee sustained a serious 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. 960028, decided February 15, 1996. In this case, the hearing officer's determination that claimant does not have any lasting effects from her injury 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, 176 (Tex. 1986). Even Dr. X noted that claimant will need continuing medications, which is evidence that she **does** have lasting effects from her injury. Further, the fact that she takes these medications, which claimant said make her drowsy, would likely mean that claimant would not be eligible for some jobs. The evidence in this case shows that, logically, the job pool has been narrowed due to the effects of or treatment for claimant's injury. See *generally* Texas Workers' Compensation Commission Appeal No. 982993, decided February 5, 1999. Therefore, we must reverse the hearing officer's direct result determination. The overwhelming evidence supports a finding that claimant's impairment was at least **a** cause of the underemployment in this case.

We reverse the hearing officer's determination that claimant's underemployment during the qualifying periods in question was not a direct result of her impairment and render a decision that claimant's underemployment during the qualifying periods in question was a direct result of her impairment from the compensable injury. We reverse the hearing officer's determination that claimant is not entitled to SIBs for the 13th through 15th quarters and render a decision that claimant is entitled to SIBs for the 13th through 15th quarters.

According to information provided by carrier, the true corporate name of the insurance carrier is **TRINITY UNIVERSAL INSURANCE COMPANY OF KANSAS, INC.** and the name and address of its registered agent for service of process is

**RONALD I. HENRY  
10000 NORTH CENTRAL EXPRESSWAY  
DALLAS, TEXAS 75230.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge