

APPEAL NO. 040047  
FILED FEBRUARY 12, 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 November 14, 2003. The hearing officer determined that the appellant (claimant) is not entitled to 11th quarter supplemental income benefits (SIBs). The claimant appeals this determination. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed as reformed.

The claimant asserts that the fact that the hearing officer failed to document that the claimant's prior sworn testimony was admitted into evidence as Hearing Officer's Exhibit No. 3, leads "counsel to wonder whether the Hearing Officer reviewed anything in writing his decision." The record reflects that upon identifying and offering the exhibit, the hearing officer noted, "[c]ertainly, Hearing Officer's [Exhibit No.] 3 is part of the record", and, indeed the exhibit is contained in the record. Because of this, we perceive the hearing officer's failure to note the exhibit in the "Evidence Presented" portion of the decision as an oversight and cannot agree that such oversight should call into question the hearing officer's review of the evidence in the case. The decision is reformed to reflect that Hearing Officer's Exhibit No. 3, the transcript from the September 22, 2003, hearing held to determine the claimant's entitlement to 9th and 10th quarter SIBs, was admitted into evidence.

Section 408.142 provides that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with his or her ability to work. Rule 130.102(d)(4) states that the "good faith" criterion will be met 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[.]

A finding of no ability to work is a factual determination for the hearing officer to resolve. The hearing officer found that the claimant failed to provide a narrative report specifically explaining how the compensable cervical and lumbar injuries, as opposed to those injuries in combination with the claimant's cerebral palsy, caused a total inability to work during the qualifying period in question. Additionally, the hearing officer found that the report of Dr. B, dated March 5, 2003, constituted a record showing the claimant

“retains a partial ability to work.” Based on the findings, the hearing officer concluded that the claimant is not entitled to SIBs for the 11th quarter. Nothing in our review of the record indicates that the hearing officer’s decision 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 (Tex. 1986).

The claimant argues that the hearing officer “is making a decision contrary to the prior quarters based on substantially the same evidence. . . .” Each quarter of SIBs is considered on its own merits; however, decisions regarding an employee’s ability to work in consecutive quarters of SIBs merit close scrutiny when the evidence presented is substantially the same during the consecutive quarters. Texas Workers’ Compensation Commission Appeal No. 982480, decided December 13, 1998. We would point out that in the present case, the evidence from the hearings wherein the claimant was found to be entitled to prior quarter SIBs was not presented. Furthermore, the evidence reflects that with regard to the most recent SIBs quarters, 9th and 10th, a hearing resulted in a decision that the claimant was not entitled to SIBs.

As we have affirmed the hearing officer’s decision based on his “good faith” finding, we need not address the claimant’s argument with regard to the determination that the claimant’s unemployment during the qualifying period in question was a direct result of her compensable injury.

The decision and order of the hearing officer are affirmed as reformed.

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

**DOROTHY A. LANGLEY  
10000 NORTH CENTRAL EXPRESSWAY  
DALLAS, TEXAS 75231.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge