

APPEAL NO. 041047  
FILED JUNE 28, 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 April 8, 2004. The hearing officer determined that respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 12th quarter.

The appellant (carrier) appeals, contending that since the claimant had been found not entitled to SIBs for the prior three quarters he should not be entitled to SIBs for the 12th quarter. The carrier also contends that the medical report identified as a narrative that specifically explains how the compensable injury causes a total inability to work should not be considered because it was not written by the doctor. The file does not contain a response from the claimant.

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 criteria at issue in this case is whether the claimant has made a good faith effort to obtain employment commensurate with his ability to work. Section 408.142(a)(4) and Rule 130.102(b)(2). 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.

In this case, the claimant had a total loss of vision in the left eye due to an unrelated matter and had sustained a compensable right eye injury which the designated doctor for the impairment rating (IR) had rated a 24% IR. During the prior three quarters the claimant had proceeded on a good faith job search theory and was found not entitled to SIBs (see Carrier Exhibit E) which was affirmed by the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 033307, decided February 17, 2004 (Carrier Exhibit F). For the 12th quarter the claimant proceeded under a total inability to work theory pursuant to Rule 130.102(d)(4) and submitted a report dated December 18, 2003 (next to the last day of the relevant qualifying period), from Dr. H, a physician in (state) where the claimant was living at the time. That report was admitted as Claimant's Exhibit No. 3, without objection from the carrier.

Addressing the carrier's complaint that the claimant had been found not entitled to SIBs for the three prior quarters, the carrier argues that there was no change in condition and therefore the claimant should not be entitled to SIBs for the 12th quarter. We note that each quarter of SIBs entitlement stands alone and the decision of eligibility

for one quarter is not binding on determining eligibility for subsequent quarters. Texas Workers' Compensation Commission Appeal No. 000512, decided April 24, 2000; Texas Workers' Compensation Commission Appeal No. 031337, decided July 7, 2003. Further, and more importantly, some of the evidence, principally Dr. H's report, has changed from the previous quarters.

As the carrier states, questions of authenticity of Dr. H's report arose during the CCH. We note that the report had apparently been timely exchanged and that the carrier did not challenge the authenticity until the hearing officer began questioning the letter based on the lack of a letterhead heading, the format, and the wording. Apparently on his own motion the hearing officer called Dr. H, during the CCH, to verify the authenticity. Dr. H said that he remembered the claimant and that he had signed the letter but did not write it. Although the carrier argues that the claimant wrote the letter, that is disputed and the claimant testified that a lady in Dr. H's office typed the letter. The hearing officer then sent Dr. H a facsimile transmission of the letter and Dr. H verified his signature and medical identification number. Dr. H then said "I don't know who composed this letter, but it pretty much states the circumstances." The hearing officer could believe that Dr. H, upon reviewing the report, adopted it as his own. It is within the province of the hearing officer to judge the weight and credibility that is given to that document.

The report of a designated doctor, dated September 9, 2003, apparently appointed pursuant to Rule 130.110 shortly before the qualifying period, does state the claimant was noncomplaint during testing, and that the claimant has "functional vision loss" in his right eye. The report does not comment on an ability to work. Regarding the fact that the hearing officer did not mention the report, neither the 1989 Act, nor Texas Workers' Compensation Commission rules or policy require a hearing officer to list all of the exhibits and/or discuss all the evidence.

While there may be significant doubts about the authenticity of the contents of Dr. H's report, the carrier did nothing to challenge the report prior to the CCH, nor did it request the record to stay open for further investigation of the circumstances surrounding that letter and/or seek to take a deposition by written questions of the doctor. We decline to substitute our judgment for that of the trier of fact even if the evidence might support a different result.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not 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 hearing officer's decision and order.

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

**UNITED STATES CORPORATION COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Edward Vilano  
Appeals Judge