

APPEAL NO. 061268
FILED AUGUST 3, 2006

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 May 10, 2006. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the fourth quarter, February 19 through May 20, 2006. The appellant (self-insured) appealed, disputing the determination of SIBs entitlement. The self-insured contends that there is another record in evidence which shows that the claimant is able to return to work and contends that there is not a sufficient narrative report from a doctor in evidence, which specifically explains how the injury causes a total inability to work. The claimant responded, urging affirmance.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on _____; received at least a 15% impairment rating; and did not elect to commute any part of his impairment income benefits. At issue was whether the claimant was entitled to SIBs for the fourth quarter. The claimant testified that he injured his neck, back, left knee, and left shoulder, when he slipped and fell while mopping floors.

Section 408.142 as amended by the 79th Legislature, effective September 1, 2005, references the requirements of Section 408.1415 regarding work search compliance standards. Section 408.1415(a) states that the (Texas Department of Insurance, Division of Workers' Compensation (Division)) commissioner by rule shall adopt compliance standards for SIBs recipients. In that no such rules have been implemented as of this date, we refer to the eligibility criteria for SIBs entitlement in 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Commissioner's Bulletin No. B-0058-05 dated September 23, 2005, provides that until new SIBs rules are adopted, the Division's Rules 130.100-130.110 govern the eligibility and payment of SIBs and remain in effect until they are amended, repealed, or modified by the Commissioner of Workers' Compensation.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the fourth quarter. The claimant proceeds on a theory of a total inability to work in any capacity. 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.

The claimant relied upon the narrative reports of his treating doctor which the hearing officer quoted in his discussion of the evidence as follows:

“Medical complications will prevent surgery for [the claimant.] He is in the process for individual counseling. He needs a multidisciplinary chronic pain management program to complete his care and ultimately be [a] functional citizen.”

“I recommend that [the claimant] not work at this time as to not aggravate his condition.”

A review of the exhibits in evidence reflects that there is no narrative report from a doctor that specifically explains how the claimant’s compensable injury caused a total inability to work during the relevant qualifying period. The correspondence relied upon by the claimant and referred to by the hearing officer as a narrative report of his inability to work does provide physical examination findings and recommendations for treatment. However, the doctor’s only statement regarding the claimant’s ability to work is a recommendation that he “not work at this time as to not aggravate his condition.” The treating doctor’s correspondence does not explain how the compensable injury prevents the claimant from working in any capacity. The Appeals Panel has held that generalized fears or the possibility of reinjury does not equate to a total inability to work. Appeal Panel Decision 970475, decided April 28, 1997.

We hold that the claimant did not meet the requirements of Rule 130.102(d)(4) in that there was no narrative report from a doctor in the record, which specifically explained how the compensable injury causes a total inability to work. Accordingly, the hearing officer’s determination that the claimant is entitled to SIBs for the fourth quarter is reversed and a new determination rendered that the claimant is not entitled to SIBs for the fourth quarter.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica L. Ruberto
Appeals Judge