

APPEAL NO. 091318
FILED OCTOER 23, 2009

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 August 3, 2009. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the third and fourth quarters. The appellant (carrier) appealed the hearing officer's SIBs determinations. The claimant responded, urging affirmance.

DECISION

Reversed and rendered.

It is undisputed that the claimant sustained a right ankle injury at work on _____. The parties stipulated that: (1) the claimant sustained a compensable injury on _____, that resulted in an impairment rating of 15% or greater; (2) the claimant has not commuted any portion of his impairment income benefits; (3) the third quarter of SIBs, April 28 through July 27, 2009, has a qualifying period of January 4 through April 14, 2009; and (4) the fourth quarter of SIBs, July 28 through October 26, 2009, has a qualifying period of April 15 through July 14, 2009.

ENTITLEMENT TO SIBS

Eligibility criteria for SIBs entitlement are set forth in Section 408.142. 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. 28 TEX. ADMIN. CODE § 130.101(4) (Rule 130.101(4)) provides in part that a qualifying period that begins on or after July 1, 2009, is subject to the provisions of this subchapter, and a qualifying period that begins prior to July 1, 2009, remains subject to the rules in effect on the date the qualifying period begins. The qualifying periods for the third and fourth quarters of SIBs began prior to July 1, 2009, therefore eligibility criteria for SIBs entitlement is governed by the Division's "old" SIBs rules, Rules 130.100-130.110, in effect prior to July 1, 2009.

The claimant contends that he has 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 hearing officer states in her decision that for the third and fourth quarters of SIBs, the medical records support the claimant's position that he has no ability to work and the surgeon (Dr. B) and the treating doctor (Dr. L) have not released the claimant back to work. In evidence is a letter dated October 20, 2008, from Dr. B's "assistant" that states "[d]uring this time, the [claimant] is unable to work because of recurrent weekly and bi-weekly visits, physical therapy, pain management and upcoming pre-planned surgeries to make adjustments to the external fixator. [The claimant] may not be able to return to any full time work for at least 6 months." The carrier contends that the letter dated October 28, 2008, is authored by Dr. B's assistant, rather than Dr. B, therefore it is not a narrative report from a doctor. We agree. Section 401.011(17) defines "Doctor" to mean a doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice. Further, the October 20, 2008, report does not specifically explain how the compensable ankle injury caused a total inability to work. That report is insufficient to constitute a narrative as required by Rule 130.102(d)(4).

Also, in evidence is letter of clarification dated May 11, 2009, addressed to Dr. B in which he is asked "[w]ith respect to [the claimant's] compensable injury, is he able to work?" The letter contains a hand-written notation, next to the question regarding the claimant's ability to work, which states "No-Failed Fusion See Enclosed Notes From 3/4/09 + 4/29/09." This hand-written notation does not constitute a narrative report that explains how the compensable injury caused a total inability to work in any capacity. Given that Dr. B's May 11, 2009, report fails to specifically explain how the compensable ankle injury caused a total inability to work, the report is insufficient to constitute a narrative as required by Rule 130.102(d)(4).

Also, in evidence is a report dated July 20, 2009, from the claimant's treating doctor, Dr. L, which states that "[t]his injured worker has remained off of work. There are no pending invasive measure[s] to help this injured worker. There has been no change in his condition regarding the work-related injury. In my 25 years of experience as well as that as a designated doctor it is clear that this injured worker meets the criteria for SIBs for the period of 4/15/2009-7/14/2009." Dr. L's report does not explain what it is about the claimant's condition that caused a total inability to work. See Appeals Panel Decision 030507, decided April 10, 2003 (the medical report did not detail what it is about the claimant's condition that precluded him from performing any work activity; rather, it merely concluded that he cannot work). Given that Dr. L's report fails to specifically explain how the compensable ankle injury caused a total inability to work, the report is insufficient to constitute a narrative as required by Rule 130.102(d)(4).

There is no medical report from a doctor that constitutes a narrative report which specifically explains how the compensable injury causes a total inability to work. Therefore, we hold that the claimant has not met the requirement of Rule 130.102(d)(4) by providing a narrative report from a doctor which specifically explains how the compensable injury causes a total inability to work. Accordingly, we reverse the hearing officer's decision that the claimant is entitled to SIBs for the third and fourth quarters

and we render a new decision that the claimant is not entitled to SIBs for the third and fourth quarters.

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

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701-3232.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge