

APPEAL NO. 100267
FILED APRIL 19, 2010

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 February 4, 2010. The disputed issues before the hearing officer were:

- (1) Is the respondent (claimant) entitled to supplemental income benefits (SIBs) for the fifth quarter, November 1, 2009, through January 30, 2010?
- (2) Is the appellant (carrier) entitled to a reduction of the claimant's SIBs based on contribution from an earlier compensable injury and, if so, by what proportion?

The hearing officer determined that: (1) the claimant is entitled to SIBs for the fifth quarter, November 1, 2009, through January 30, 2010, and (2) the carrier is not entitled to a reduction of the claimant's SIBs based on contribution from an earlier compensable injury.

The carrier appeals the hearing officer's determination the claimant is entitled to SIBs for the fifth quarter, November 1, 2009, through January 30, 2010. The claimant responded, urging affirmance. The hearing officer's determination that the carrier is not entitled to a reduction of the claimant's SIBs based on contribution from an earlier compensable injury has not been appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on _____, which resulted in an impairment rating of 15% or greater, and the qualifying period for the fifth quarter of SIBs was from July 20 through October 18, 2009.

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 Commissioner by rule shall adopt compliance standards for SIBs recipients. 28 TEX. ADMIN. CODE §§ 130.100-130.109 (Rules 130.100-130.109), effective July 1, 2009, govern the eligibility of SIBs. 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 claimant's theory of entitlement to SIBs for the fifth quarter is based on a total inability to work. Rule 130.102(d)(1) provides, in pertinent part, that an injured employee demonstrates an active effort to obtain employment by meeting at least one or any combination of the following work search requirements each week during the entire qualifying period:

* * *

(E) 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 found that the claimant provided a narrative report from a doctor which specifically explains how the injury caused a total inability to work during the qualifying period for the fifth quarter of SIBs, and no other records show that the claimant was able to return to work during such qualifying period. In the Background Information section of the decision, the hearing officer states that in a report dated October 16, 2009, (Dr. M), the treating doctor, "is unequivocal in his opinion [c]laimant has no ability to work in any manner due to her impairment." However, that report from Dr. M dated October 16, 2009, also states that "[a]t the time of this letter, [the claimant] only qualifies for sedentary work therefore re-training thru [the Department of Assistive and Rehabilitative Services (DARS)] is recommended." This report dated October 16, 2009, does not constitute a narrative report that explains how the compensable injury caused a total inability to work in any capacity, given that Dr. M opines that the claimant can work sedentary duty. Dr. M's report dated October 16, 2009, does not constitute a narrative that specifically explains how the injury causes a total inability to work pursuant to Rule 130.102(d)(1)(E). There are no other records in evidence that constitute a narrative report from a doctor that explains how the compensable injury caused a total inability to work in any capacity.

The hearing officer's finding that the claimant provided a narrative report from a doctor which specifically explains how the injury caused a total inability to work during the qualifying period for the fifth quarter of SIBs is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We need not make a determination on whether there are other records that show that the claimant was able to return to work during the qualifying period in dispute, given that there is no narrative report from a doctor which specifically explains how the injury caused a total inability to work pursuant to Rule 130.102(d)(1)(E). Accordingly, we reverse the hearing officer's determination that the claimant is entitled to SIBs for the fifth quarter, November 1, 2009, through January 30, 2010, and we render a new decision that the claimant is not entitled to SIBs for the fifth quarter, November 1, 2009, through January 30, 2010.

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

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

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge