

APPEAL NO. 101826
FILED FEBRUARY 14, 2011

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 November 3, 2010. With regard to the only issue before him the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the eighth quarter, September 1 through November 30, 2010.

The appellant (carrier) appealed, contending among other matters that the hearing officer relied on medical reports which were not in evidence. The appeal file does not contain a response from the claimant.

DECISION

Reversed and a new decision rendered.

The parties stipulated that: the Texas Department of Insurance, Division of Workers' Compensation's (Division) initial determination of SIBs was made on November 25, 2008; the claimant reached maximum medical improvement on October 9, 2007, with an impairment rating (IR) of 20%; the claimant did not commute any portion of impairment income benefits; and the qualifying period for the eighth quarter began on May 20, 2010, and ended on August 18, 2010.

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 Division 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, a prison correction officer, sustained a compensable mental trauma injury in (year). The claimant's theory of entitlement to SIBs for the eighth 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, in the Background Information portion of his decision, refers to a "May 13, 2010 letter from the treating psychiatrist" The carrier in its appeal contends that "there is no such evidence in the record for this case." We agree. The same hearing officer had conducted a CCH involving this claimant for the seventh quarter of SIBs which apparently included the May 13, 2010, report. However, the evidence in this case does not include a May 13, 2010, report from the treating psychiatrist, (Dr. L), who is associated with Mental Health and Mental Retardation (MHMR) Services for the (County).

The hearing officer also referenced the report of (Dr. AB), a carrier required medical evaluation doctor, who in a report dated March 17, 2010, diagnosed the claimant with post-traumatic stress disorder (PTSD), resolved, and rule out major depressive disorder. Dr. AB commented on the claimant's ability to work as "relative to the work injury in question, the claimant can return to work full duty with no restrictions. Please note that secondary to her personality disorder and other probable comorbid psychiatric problems she probably would not be able to return [to] work."

In 2008, (Dr. W), a designated doctor, in assigning an IR, referred the claimant to (Dr. B), a neuropsychologist. Dr. B, in a report dated January 29, 2008, diagnosed the claimant as having a "Major Depressive Disorder, single episode, severe without psychotic features" and PTSD. Neither Dr. W's nor Dr. B's reports in evidence address an ability to work and do not constitute a narrative report from a doctor which specifically explains how the compensable injury causes a total inability to work.

Also, in evidence are two brief reports from MHMR Services for the (County). A report dated July 2, 2010 (during the eighth quarter qualifying period), from (County) MHMR states the claimant is being treated for major depression and PTSD and that the claimant "has a total inability to work at this time." The report is signed by a health professional and co-signed by (Dr. I). An attached undated note states that Dr. I has reviewed the claimant's chart and "does indeed believe she has an inability to work" based on medical documentation. Another report, dated July 28, 2010, also co-signed by Dr. I stated essentially the same thing as the July 2, 2010, note. Although these reports contain a diagnosis of major depression and PTSD for the claimant, each report is insufficient evidence of a narrative from a doctor that specifically explains how the compensable injury causes a total inability to work.

The hearing officer, in his decision and order does not identify what record was a narrative report from a doctor which specifically explained how the compensable injury caused a total inability to work other than the May 13, 2010, report that was not in evidence and our review of the record reveals there is no such report in evidence.

In reviewing a “great weight” challenge, we must examine the entire record to determine if: (1) there is only “slight” evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer’s determination that the claimant is entitled to SIBs for the eighth quarter is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Accordingly, we reverse the hearing officer’s determination that the claimant is entitled to SIBs for the eighth quarter, September 1 through November 30, 2010, and we render a new decision that the claimant is not entitled to SIBs for the eighth quarter, September 1 through November 30, 2010.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
D/B/A CSC–LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.¹**

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Carisa Space-Beam
Appeals Judge

¹ We note that this is the address listed for the carrier’s registered agent for service of process contained in the Hearing Officer’s Exhibit No. 2 and that the hearing officer in his decision and order lists a different address than that contained in the Hearing Officer’s Exhibit No. 2.