

APPEAL NO. 111188
FILED OCTOBER 10, 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 was held on July 7, 2011. With regard to the sole issue before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the third quarter.

The appellant (carrier) appealed, contending that the claimant had some ability to work and that any inability to work was due to a non-compensable condition. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

The parties stipulated that the claimant had at least a 15% impairment rating and had not elected to commute any part of her impairment income benefits. Although not stipulated, it was undisputed that the qualifying period for the third quarter was from November 24, 2010, ending on February 22, 2011.

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.

The claimant's theory of entitlement to SIBs for the third 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:

[omission]

(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 carrier, in a Notice of Disputed Issue(s) and Refusal to Pay Benefits (PLN-11), has accepted a L5-S1 disc protrusion, right wrist fracture and left ankle sprain. The hearing officer, in the Background Information comments, that the “primary compensable injury is a 4 mm disc protrusion at L5-S1.” The evidence established that the claimant suffers from non-compensable “brittle diabetes” which has caused “several hypoglycemic episodes precipitating seizures.”

The hearing officer, in the Background Information comments that the claimant “relies upon the findings of both her treating doctor and designated doctor” to establish that the claimant has no ability to work. At the outset, we note that the Appeals Panel has long held that “a narrative report from a doctor which specifically explains how the injury causes a total inability to work” must come from one doctor. Appeals Panel Decision (APD) 033152, decided January 16, 2004, held that reports from different doctors cannot be read together to create a narrative report. See *also* APD 012480, decided November 15, 2001. While these cases were decided prior to the current SIBs rule, the provision in Rule 130.102(d)(1)(E) was left unchanged from the prior rule. Therefore, we examine the reports of a designated doctor and the treating doctor separately.

The parties stipulated that (Dr. N) was appointed as the designated doctor for purposes of determining ability to return to work. There is no reference in Dr. N’s report regarding SIBs.

Dr. N, in a report dated December 6, 2010, discusses the claimant’s history, records he reviewed, medications the claimant takes and concludes:

The examinee exhibits some lumbar spasm and some mild neuropathic changes; however, some of this is probably diabetic. She does not have any significant ankle problems at this point, just mild soreness around the lower extremity. The examinee is a brittle diabetic and has several hypoglycemic episodes precipitating seizures. The examinee, at this point, is unemployable. Even with sedentary work she is unable to drive. As a consequence, she is unable to go to any facility. She indicated she has no computer literacy and at this point probably could not even do work at a computer at home.

The claimant testified that her inability to drive was largely due to the possibility that she may have a seizure. In APD 012286, decided November 14, 2001, the Appeals Panel “held that the narrative report from the doctor must specifically explain how the compensable injury causes a total inability to work.” (emphasis in the original.) See *also* APD 032173, decided October 9, 2003. We hold that Dr. N’s narrative does not specifically explain how the compensable injury causes a total inability to work.

There are several reports from (Dr. M), the treating doctor, in evidence. A report from Dr. M with a service date of March 16, 2011, comments:

It is my opinion that the patient's degree of chronic pain [associated with significant psychosocial dysfunction] which we have not been able to deal with adequately is such that she cannot reasonably seek or keep employment in any reasonable capacity. It is my opinion that the pain stems from the compensable injuries alone and are independent of any other health problems. Her condition has remained unchange[d] since I last saw her and it is my medical opinion that she was unable to work or seek work from 2/23/2011 to 5/24/2011 (est).

This report associates chronic pain with a non-compensable condition, speaks of "reasonable capacity" rather than total inability to work as required by Rule 130.102(d)(1)(E) and specifically references the fourth quarter qualifying period.

Another of Dr. M's reports with a service date of February 8, 2011, simply states the claimant "is not reasonably capable of any work at this time due to her compensable injuries." This report does not specifically explain how the compensable injury causes a total inability to work.

Another report from Dr. M with a date of service of November 19, 2010, comments:

1. No change in work status (no work)

Additional Comments: The patient's drivers license has been revoked and she is dependent on family and friends for transportation. She continues to have uncontrolled seizures and is a danger to herself and others. She is not a surgical candidate and the conditions in her back and wrist are still very symptomatic. It is my opinion that she cannot seek or keep employment in any usual sense of the word.

This report references seizures which are not a part of the compensable injury and in any event being unable to drive does not specifically explain how the injury causes a total inability to work. Nor does inability to seek or keep employment "in any usual sense of the word" equate to a total inability to work.

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).

We hold that none of the reports in evidence constitute a narrative report that specifically explains how the compensable injury caused a total inability to work in any capacity. We further hold that the hearing officer's determination that the claimant was unable to perform any type of work in any capacity and was entitled to SIBs for the third quarter to be so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We reverse the hearing officer's determination that the claimant is entitled to SIBs for the third quarter and render a new decision that the claimant is not entitled to SIBs for the third quarter.

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

**MR. PARKER W. RUSH, PRESIDENT
5525 LBJ FREEWAY
DALLAS, TEXAS 75240.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge