

APPEAL NO. 111708
FILED DECEMBER 29, 2011

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). A consolidated contested case hearing was held on October 5, 2011. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first through third quarters, from March 20 through December 17, 2011. The appellant (carrier) appealed the hearing officer's SIBs determination on the three SIBs quarters, contending that the claimant failed to establish entitlement under a total inability to work theory. The claimant responded, urging affirmance.

DECISION

Reversed and rendered.

The parties stipulated that: (1) the claimant sustained a compensable injury on (date of injury), which resulted in an impairment rating (IR) of 15% or greater; (2) the claimant has not commuted any portion of the impairment income benefits; (3) the quarter dates for the first through third quarters of SIBs are from March 20 through December 17, 2011; (4) the qualifying dates for the first through third quarters of SIBs are from December 6, 2010, through September 4, 2011; and (5) during the qualifying periods for the first through third quarters of SIBs, the claimant was unemployed. The hearing officer found that during the qualifying period for the first through third quarters of SIBs the claimant's unemployment was a direct result of his impairment from the compensable injury and this finding was not appealed.

The hearing officer, in the Background Information of her decision, comments that the claimant sustained compression fractures in his lumbar spine and a nasal fracture while in the course and scope of his employment as a truck driver. The claimant underwent spinal surgeries. It was undisputed that the designated doctor, (Dr. B), appointed to address maximum medical improvement (MMI) and IR, certified that the claimant reached MMI on January 23, 2010, with a 20% IR and that Dr. B was also appointed to address the claimant's ability to return to work. The evidence reflects that Dr. B examined the claimant on November 1, 2010, and opined that the claimant could not return to work. In evidence is a Work Status Report (DWC-73) by Dr. B that states that the claimant's injuries prevent him from returning to work as of November 1, 2010, and continuing through an unknown date.

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 first through third quarters 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 claimant attached to his Applications for [SIBs] (DWC-52) for the first through third quarters, the report of the designated doctor, Dr. B, dated November 1, 2010, as the narrative report from a doctor which specifically explains how the compensable injury causes a total inability to work. In that report, Dr. B states:

Current Symptoms & Limitations: The main problem as far as the [claimant] is concerned is pain. He had to take Hydrocodone about 4 times a day, and he said that he cannot do anything for very long without 'paying for it.' He can do some manual work but usually has to rest and take a long period of time to get over it. He does not take any particular sleeping medicine other than over-the-counter medicine. The [claimant] does not feel that he could work as a truck driver at the present time mainly because he has to take the Hydrocodone 4 times a day in order to function.

[omission]

VI. Return to Work: He is not able to return to work.

The November 1, 2010, report of Dr. B in evidence addresses an ability to work but does not constitute a narrative from a doctor which specifically explains how the compensable injury causes a total inability to work.

The only other medical report in evidence is by (Dr. S), a post-designated doctor required medical examination doctor, who examined the claimant on January 17, 2011, referred the claimant for a functional capacity evaluation, and who stated in his report dated that same day, that the claimant had an ability to do light work.

Also in evidence is a Vocational Assessment Report dated May 27, 2011, based on an evaluation that the claimant was referred to by the Department of Assistive and Rehabilitative Services. The report is prepared by a vocational evaluator, not a doctor, and thus does not meet the requirement of a narrative from a doctor which specifically explains how the compensable injury causes 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 medical 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 during the qualifying periods for the first through third quarters of SIBs that the claimant was unable to perform any type of work in any capacity is 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 first through third quarters of SIBs and render a new decision that the claimant is not entitled to SIBs for the first through third quarters.

The true corporate name of the insurance carrier is **GREAT WEST CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**DAVID SARGENT
2777 STEMMONS FREEWAY, SUITE 1257
DALLAS, TEXAS 75207.**

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge