

APPEAL NO. 130881
FILED JUNE 6, 2013

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 March 1, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the sole disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter, November 2, 2012, through January 31, 2013. The appellant (carrier) appealed the hearing officer's determination. The claimant responded, urging affirmance.

DECISION

Reversed and rendered.

The parties stipulated that: the claimant sustained a compensable injury on [date of injury], which resulted in an impairment rating of 15% or greater; the claimant did not commute any portion of the impairment income benefits; the first quarter qualifying period dates are July 21 through October 19, 2012; and although not noted in the decision and order, the parties stipulated on the record that [Dr. S], was appointed by the Texas Department of Insurance, Division of Workers' Compensation to determine the claimant's ability to return to work.

The claimant's theory of entitlement to SIBs for the first quarter is based on a total inability to work. The hearing officer found that during the qualifying period for the first quarter the claimant was unable to perform any type of work in any capacity, and noted in the Background Information section of the decision that the claimant provided a narrative report from a doctor specifically explaining how the injury caused a total inability to work and that there are no other persuasive records showing an ability to work. A Description of Injured Employee's Employment (DWC-74) in evidence lists the claimant's position as a material handler.

28 TEX. ADMIN. CODE § 130.102(d)(1) (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.

In Appeals Panel Decision (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.” See *also* APD 032173, decided October 9, 2003, and APD 111188, decided October 10, 2011.

The claimant attached to her Application for [SIBs] (DWC-52) for the first quarter the June 26, 2012, report of the designated doctor, Dr. S, as a narrative report from a doctor which purportedly explains how the compensable injury causes a total inability to work. In that report, Dr. S noted that the compensable injuries were “[complex regional pain syndrome (CRPS)] type 1: left wrist; De Quervain’s syndrome, left wrist; left radius/scaphoid fracture.” Regarding the claimant’s ability to work, Dr. S stated: “After examining the [claimant], and reviewing the medical records available to me, I determined that she has been unable to return to work in any capacity from [May 29, 2012], through the present. This disability is expected to continue until [October 1, 2012].” Dr. S’ narrative does not specifically explain how the compensable injury causes a total inability to work, nor does it cover the entire qualifying period.

The claimant also presented a narrative report from her treating doctor, [Dr. A], dated February 26, 2013. Dr. A stated the following:

The [claimant] presented to me with swelling, hyperesthesia, and allodynia, all consistent with the diagnosis of [CRPS]. . . . As a result, her left upper extremity would be considered completely disabled. Unfortunately, her pain progressed to include her right shoulder arm and hand whereby today she is unable to engage in her former work status i.e., from the date July 21 through October 19, 2012. . . . The [claimant] . . . requires continuous steady state levels of a weak narcotic analgesic, essentially acting antispasmodic as well as a neuropathic and a benzodiazepine at night. This combination of medications in conjunction with interventional injection therapy in the form of stellate or central sympathetic blockade ameliorates the [claimant’s] condition; however, it does not cure nor alleviate most of the functional limitations, which would be required in order for her to return to work in an unencumbered capacity.

Although Dr. A’s report states that the claimant is unable to return to her former work status and that she cannot return to work in an unencumbered capacity, Dr. A’s report does not state that the claimant has a total inability to work. None of the medical reports in evidence constitute a narrative report from a doctor which specifically explains how the compensable injury caused a total inability to work in any capacity.

Medical records in evidence establish that the claimant underwent left stellate ganglion blockades on July 17, September 11, October 2, October 9, and October 16, 2012. In a follow-up note dated July 30, 2012, Dr. A noted that the claimant reported “more than 70% improvement of her left shoulder, arm, and hand pain complaints.” In a follow-up note dated September 13, 2012, Dr. A noted that the claimant reported “more than 70% to 80% improvement of her left shoulder, arm, and hand pain. . . .” In a follow-up note dated November 1, 2012, Dr. A noted “[w]ith a big smile on her face [the claimant] is pleased to report more than 80% to 90% improvement of left shoulder, arm, hand, and distal digit pain complaints. . . .” Dr. A also noted that the claimant had decreased her medication and showed improved range of motion. The hearing officer’s determination that during the qualifying period for the first quarter of SIBs 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.

Because there is no narrative report from a doctor that specifically explains how the compensable injury caused a total inability to work in any capacity, and because the evidence does not establish that the claimant was unable to perform any type of work in any capacity, we reverse the hearing officer’s determination that the claimant is entitled to SIBs for the first quarter and render a new decision that the claimant is not entitled to SIBs for the first quarter.

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

**RICHARD J. GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge