

APPEAL NO. 131580
FILED SEPTEMBER 3, 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 October 30, 2012, and continued on May 3, 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 fifth quarter, August 28 through November 26, 2012. The appellant (carrier) appealed the hearing officer's determination, contending that there is no narrative report that specifically explains that the claimant has a total inability to work and the medical records in evidence show that the claimant has an ability to work. The claimant responded, urging affirmance.

DECISION

Reversed and rendered.

The claimant testified that he was employed as a maintenance engineer at a hotel and he fell off a 14-foot ladder onto his back, sustaining an injury to his back and left wrist on [date of injury]. The parties stipulated that: the claimant sustained a compensable injury on [date of injury], which resulted in an impairment rating of 20%; the claimant did not commute any portion of the impairment income benefits; the fifth quarter dates are August 28 through November 26, 2012, and the fifth quarter dates for the qualifying period are May 16 through August 14, 2012. The Texas Department of Insurance, Division of Workers' Compensation (Division) appointed [Dr. A] as the second designated doctor for the purpose of determining the claimant's ability to return to work during the qualifying period in dispute for SIBs.

The claimant's theory of entitlement to SIBs for the fifth quarter is based on a total inability to work. The hearing officer found that during the qualifying period for the fifth quarter the claimant was unable to work in any capacity. In the Background Information section of the decision the hearing officer stated that Dr. A opined that the claimant could not return to work during the qualifying period for the fifth quarter of SIBs. Further, the hearing officer stated that Dr. A's report was more persuasive than the other medical evidence.

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 for SIBs. 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 Appeals Panel has held “that the narrative report from the doctor must specifically explain how the compensable injury causes a total inability to work.” See Appeals Panel Decision (APD) 012286, decided November 14, 2001; see *also* APD 032173, decided October 9, 2003; and APD 111188, decided October 10, 2011.

The hearing officer relied on Dr. A’s report dated February 4, 2013, as a narrative report from a doctor that purportedly explains how the compensable injury causes a total inability to work. In that report, Dr. A noted that the claimant “has a failed back syndrome and lumbar disc disease” and “has a chronic back pain problem with chronic lumbago.” With regard to the claimant’s ability to work, Dr. A stated in his report that:

[The claimant] is only employable in a very limited fashion which is probably not realistic. If an ideal job could be found for him, it would involve something on the order of his being able to sit or lie down or move whenever necessary. I do not know of any such job that is available. A sedentary type job would be possible if he could get one which would allow him to move about at will. He would almost have to be self employed in order to be employable at all. I think for all intents and purposes with [the claimant’s] past history he is not employable in his present condition. In spite of the fact that he does show some signs of symptom magnification, I do not find this unusual in this situation. If a suitable sedentary position could be found where he could move about from time to time pretty much at will then he would be able to accomplish that purpose. The likelihood of finding a job of that nature is pretty remote; therefore, in my opinion, he is not able to work during the periods in question.

Although Dr. A concludes that the claimant is not able to work, he also states that the claimant has an ability to work in that the claimant is employable in a very limited

capacity and could work in a sedentary type job. Dr. A's narrative does not specifically explain how the compensable injury causes a total inability to work. See APD 130881, decided June 3, 2013. The hearing officer's finding that Dr. A opined that the claimant could not return to work in connection with SIBs is against the great weight and preponderance of the evidence.

In the background information the hearing officer states that the designated doctor's report is more persuasive than the other medical evidence. As discussed above the designated doctor's narrative report does not specifically explain how the compensable injury causes a total inability to work and the hearing officer does not discuss the other medical records in evidence in his decision. The hearing officer failed to identify any other narrative report from a doctor that specifically explains how the compensable injury caused a total inability to work. In evidence are other records that purport to show that the claimant has an ability to work. In a medical report dated December 15, 2011, [Dr. B], a post-designated doctor required medical examination doctor, opined that "[b]ased upon today's evaluation the [claimant] could return to the active work force in a sedentary position."

The Appeals Panel has held the mere existence of a medical report stating the claimant had an ability to work alone does not mandate that a hearing officer find that other records showed an ability to work. The hearing officer still may look at the evidence and determine that it failed to show this. See APD 000302, decided March 27, 2000. In this case although the hearing officer references other medical records in general, he failed to offer any explanation why they were not other records that showed an ability to work. The evidence does not support the hearing officer's determination that the claimant is entitled to SIBs for the fifth quarter. We reverse the hearing officer's determination that the claimant is entitled to SIBs for the fifth quarter and render a new decision that the claimant is not entitled to SIBs for the fifth quarter.

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.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge