

APPEAL NO. 160590

FILED MAY 31, 2016

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 8, 2016, in Fort Worth, 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, October 27, 2015, through January 25, 2016. The appellant (carrier) appeals the hearing officer's determination of entitlement to SIBs, arguing that the evidence does not support the hearing officer's determination that the claimant had a total inability to work during the qualifying period. The appeal file does not contain a response from the claimant.

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 and that the qualifying period for the first quarter of SIBs was from July 15 through October 13, 2015. The medical records reflect that the claimant was injured on (date of injury), when a 90 pound pallet fell on his head resulting in a skull fracture and intracranial bleeding.

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 (Division) commissioner by rule shall adopt compliance standards that require each SIBs recipient to demonstrate an active effort to obtain employment. 28 TEX. ADMIN. CODE §§ 130.100-130.109 (Rules 130.100-130.109), effective July 1, 2009, govern the eligibility of SIBs.

Rule 130.102(d)(1) provides, in pertinent part, that an injured employee demonstrates an active effort to obtain employment by meeting 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 claimant relies upon the medical report of the Division-appointed designated doctor, (Dr. S), dated July 28, 2015, to establish his inability to work during the qualifying period in accordance with Rule 130.102(d)(1)(E) above. The hearing officer found that the claimant provided a narrative report from Dr. S which specifically explains how the injury caused a total inability to work during the qualifying period for the first quarter of SIBs, and no other records showed that the claimant was able to work during such qualifying period. The hearing officer therefore determined that the claimant is entitled to SIBs for the first quarter due to a total inability to work.

In a narrative dated July 28, 2015, Dr. S stated the following:

The question then becomes can he work in ANY capacity.

My answer could be a conditional yes. Theoretically, a sheltered workshop with structure and supervision could potentially be a setting where the examinee could participate. He would need to be mostly sitting and also supervised closely for safety purposes. This is not to be confused with a competitive work setting with the ability to earn a meaningful wage.

While it is arguable that the work injury sequela are not the main reasons for his not working, they clearly are contributing significantly to his present dysfunction. The dizziness and degree of cognitive dysfunction seem to be related primarily to the work injury. Frankly, I cannot envision any job this man, with his age and health history, could safely perform well enough to satisfy a potential employer.

Dr. S describes circumstances in which the claimant could work and does not specifically explain how the compensable injury causes the claimant to be unable to work in any capacity. The report from Dr. S did not constitute a narrative which specifically explains how the compensable injury causes a total inability to work pursuant to Rule 130.102(d)(1)(E). Additionally, there is no other narrative in evidence that specifically explains how the compensable injury causes a total inability to work pursuant to Rule 130.102(d)(1)(E). 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). See Appeals Panel Decision 100267, decided April 19, 2010.

We reverse the hearing officer's determination that the claimant is entitled to SIBs for the first quarter as being so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Because there is no narrative 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 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 **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge