

APPEAL NO. 051112
FILED JUNE 23, 2005

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 April 12, 2005. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the sixth quarter, January 27 through April 27, 2005. The appellant (carrier) appealed, arguing that the medical evidence was insufficient to establish that the claimant's compensable left knee injury prevented him from returning to work in any capacity; that there were medical records which showed the claimant is able to return to work; and that the hearing officer either failed to consider these other records or failed to explain why she did not find these records credible. The carrier additionally argues that the claimant failed to show that his unemployment was a direct result of the permanent impairment from his compensable injury. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

The parties stipulated that on _____, the claimant sustained a compensable injury; that the claimant reached maximum medical improvement with an impairment rating of 15% or greater; that the claimant did not commute any portion of impairment income benefits; and that the sixth quarter qualifying period, began October 15, 2004, and ended January 13, 2005. Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the third quarter. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee 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 so far as the carrier is appealing the direct result requirement of Rule 130.102(c), we hold that the hearing officer's determination that the claimant's unemployment during the sixth quarter qualifying period was a direct result of his impairment from the compensable injury is sufficiently supported by the evidence.

The hearing officer found that the claimant provided a narrative report from his treating doctor that specifically explained how the injury "caused claimant a total inability to work during the sixth quarter qualifying period." The carrier contends that there was not a narrative in evidence, which specifically explained how the injury caused a total inability to work. Assuming, without deciding, that the report from the claimant's treating doctor satisfies the requirement of Rule 130.102(d)(4) that the claimant provide a

narrative report from a doctor that specifically explains how the compensable injury causes a total inability to work, the question remains as to whether another record shows that the claimant had some ability to work.

In cases where a total inability to work is asserted and there are other records which on their face appear to show an ability to work, the hearing officer is not at liberty to simply reject the records as not credible without explanation or support in the record. Texas Workers' Compensation Commission Appeal No. 020041-s, decided February 28, 2002. However, "[t]he 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." However, in the instant case, we cannot agree that no other record showed that the claimant had an ability to work during the relevant time period. The test is not whether the claimant can obtain and retain gainful employment or full-time employment. Texas Workers' Compensation Commission Appeal No. 031089, decided June 23, 2003.

In correspondence dated February 17, 2004, and January 31, 2005, (Dr. X) after examining the claimant and reviewing his medical records, opined that the claimant could work light duty, performing a job that would allow him to both sit and stand. Dr. X acknowledged that the claimant would have some restrictions regarding kneeling, repetitive squatting, and climbing stairs, inclines or ladders. The hearing officer wholly failed to articulate a rational basis for rejecting the correspondence from Dr. X as other records showing that the claimant had some ability to work in the qualifying period for the sixth quarter. In the absence of such explanations, we believe that her determination that "because claimant had a total inability to work during the sixth quarter qualifying period, the criterion that claimant attempt in good faith to obtain employment commensurate with his work ability is satisfied" is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, the determination that the claimant is entitled to SIBs for the sixth quarter is reversed and a new decision rendered that the claimant is not entitled to sixth quarter SIBs.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701-2554.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge