

APPEAL NO. 130821
FILED MAY 29, 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 (CCH) was held on February 21, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [date of injury], extends to depression and anxiety; (2) the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter; and (3) the appellant (carrier) waived its right to contest the claimant's entitlement to SIBs for the fourth quarter by failing to timely request a benefit review conference (BRC).¹

The carrier appeals the hearing officer's determinations that: the compensable injury extends to depression and anxiety; the claimant is entitled to fourth quarter SIBs; and the carrier waived its right to contest the claimant's entitlement to SIBs for the fourth quarter by failing to timely request a BRC. The claimant responded, urging affirmance.

DECISION

Affirmed.

Section 410.203(b) was amended effective September 1, 2011, to allow the Appeals Panel to affirm the decision of a hearing officer as prescribed in Section 410.204(a)(1). Section 410.204(a) provides in part that the Appeals Panel may issue a written decision on an affirmed case as described in subsection (a-1). Subsection (a-1) provides that the Appeals Panel may only issue a written decision in a case in which the panel affirms the decision of a hearing officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the CCH that require correction but does not affect the outcome of the hearing. This case is a situation that requires correction but does not affect the outcome of the hearing.

The parties stipulated that on [date of injury], the claimant sustained a compensable injury resulting in an impairment rating of 15% or greater; the qualifying period for the fourth quarter of SIBs was from August 1 through October 30, 2012; and that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed [Dr. H] as designated doctor for the purpose of extent of injury and return to work. The hearing officer noted in the Background Information portion of her decision

¹ We note that the decision in the "Issues" incorrectly identifies the third quarter as the quarter in dispute for the stated waiver issue. The issue litigated and determined by the hearing officer was whether the carrier waived its right to contest the claimant's entitlement to SIBs for the fourth quarter by failing to timely request a BRC.

that it was undisputed that the claimant sustained a compensable injury when he cut the index finger of his left hand as he was opening a zip tie.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], extends to depression and anxiety is supported by sufficient evidence and is affirmed.

CARRIER WAIVER OF FOURTH QUARTER SIBS

The hearing officer's determination that the carrier waived its right to contest the claimant's entitlement to SIBs for the fourth quarter by failing to timely request a BRC is supported by sufficient evidence and is affirmed.

FOURTH QUARTER SIBS

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 of SIBs.

The claimant's theory of entitlement to SIBs for the fourth quarter is based on a total inability to work. There is no evidence regarding work search efforts, return to work efforts, or involvement with vocational rehabilitation programs or the Texas Workforce Commission. 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 claimant attached to his Application for [SIBs] (DWC-52) for the fourth quarter, a letter from [Ms. M], a family nurse practitioner, dated October 9, 2012, as the narrative report from a doctor which specifically explains how the compensable injury

causes a total inability to work. In that letter, Ms. M explained the claimant's symptoms in detail and stated that due to chronic pain, depression, decreased concentration and inability to use his upper extremities, the claimant remains unable to work at any job at this time. The narrative was electronically signed by Ms. M only. The hearing officer correctly notes that this narrative is insufficient since the narrative is not co-signed by a physician. Rule 130.102(d)(1)(E) requires that the narrative report be from a doctor which specifically explains how the compensable injury causes a total inability to work.

Dr. H examined the claimant on November 19, 2012. Although appointed to give an opinion on the claimant's ability to return to work during the qualifying period for the fourth quarter of SIBs, Dr. H failed to discuss this issue in his initial narrative. In a December 21, 2012, response to a letter of clarification, Dr. H stated: "[i]t is my opinion that [the claimant] was unable to work during the time period requested." The hearing officer determined that the claimant is entitled to SIBs for the fourth quarter, finding the claimant had no ability to work. The hearing officer stated that the narrative from Ms. M provided additional support for Dr. H's position. The Appeals Panel has held that reports from different doctors cannot be read together to create a narrative report. The narrative report must come from one doctor. Appeals Panel Decision (APD) 011152, decided July 16, 2001. In APD 002724, decided January 5, 2001, we stated that in determining whether the requirements of Rule 130.102(d)(4) (now found in Rule 130.102(d)(1)(E)) for a doctor's narrative report are met, the following will be considered: amendments; supplements, including CCH testimony from the doctor; information incorporated in the report by reference; or information from a doctor's medical records in evidence that can be reasonably incorporated in the doctor's narrative report by inference based on some connection between the report and the information in the medical records. See *also* APD 033152, decided January 16, 2004. In the instant case, there was not a narrative from a doctor who specifically explained how the compensable injury caused a total inability to work. Accordingly, the hearing officer's finding that the claimant had no ability to work is not supported by sufficient evidence.

However, as previously noted the hearing officer's determination that the carrier waived its right to contest the claimant's entitlement to SIBs for the fourth quarter by failing to timely request a BRC is affirmed. Therefore, the claimant is entitled to SIBs for the fourth quarter based on carrier waiver.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [date of injury], extends to depression and anxiety.

We affirm the hearing officer's determination that the carrier waived its right to contest the claimant's entitlement to SIBs for the fourth quarter by failing to timely request a BRC.

We affirm the hearing officer's determination that the claimant is entitled to SIBs for the fourth quarter because the carrier waived its right to contest the claimant's entitlement to SIBs for the fourth quarter.

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

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge