

APPEAL NO. 170210
FILED MARCH 22, 2017

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 December 19, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 13th quarter. The appellant (carrier) appeals the hearing officer's determination of SIBs entitlement, contending that the claimant did not have a narrative that specifically explained a total inability to work and there are other records which show the claimant has an ability to work in a sedentary capacity. The carrier additionally argues that the hearing officer combined medical records to create a narrative that the claimant could not work. The claimant responded, urging affirmance of the disputed SIBs determination.

DECISION

Reversed and rendered.

The parties stipulated that on (date of injury), the claimant sustained a compensable injury resulting in an impairment rating of 15% or higher; the dates for the 13th quarter of SIBs began on September 2 through December 1, 2016; and the dates for the qualifying period ran from May 21 through August 19, 2016. The claimant testified that he was injured when he fell into a grease pit and was knocked unconscious, broke his hip, and injured his back.

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 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 sole theory of entitlement to SIBs for the 13th 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.

In her discussion of the evidence, the hearing officer stated, “[t]he medical records contained information concerning [the] [c]laimant’s limitations and restrictions and when considered in conjunction with the designated doctors’ and [required medical examination doctors’] reports were sufficient to constitute a narrative explaining how [the] [c]laimant was unable to work because of the compensable injury.” In Appeals Panel Decision 011152, decided July 16, 2001, the Appeals Panel held that Rule 130.102(d)(4) (now found in Rule 130.102(d)(1)(E)) does not contemplate the combining of reports from more than one doctor to somehow fashion a combination narrative report. We have held that the reports from different doctors cannot be read together to create a narrative report. The narrative report must come from one doctor.

In a narrative report dated November 15, 2016, (Dr. R) a designated doctor appointed by the Division stated the claimant “has right lower extremity sensory deficit and weakness and ambulation is extremely difficult without assistance. It is my opinion the injured employee’s medical condition resulting from the workers’ compensation injury has prevented the employee from returning to work in any capacity for the disability period in question from 11/21/2015 to 11/18/2016.” Additionally, in a narrative report dated April 28, 2016, (Dr. D), a Division-appointed designated doctor stated that “[t]he records indicate that [the claimant] was disabled as a result of his injury prior to this incarceration and continued to be disabled following this incarceration with no change in his medical condition during his incarceration. . . . Whether incarcerated or not, [the claimant’s] disability is a direct result of his compensable injury. There are no records to indicate that he was ever released to return to work at any capacity.”

It is clear from her discussion, the hearing officer was persuaded the claimant had a total inability to work during each week of the qualifying period of the 13th quarter of SIBs by combining numerous records from more than one doctor to constitute a narrative explaining how the claimant was unable to work because of the compensable injury. 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 during the qualifying period for the 13th quarter is so against the great weight as to be clearly wrong and manifestly unjust. We reverse the hearing officer’s determination that the claimant is entitled to SIBs for the 13th quarter and render a new decision that the claimant is not entitled to SIBs for the 13th quarter.

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

**MR. GREG FARNIK, ATTORNEY OF RECORD
5525 LBJ FREEWAY
DALLAS, TEXAS 75240.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge