

APPEAL NO. 172482
FILED DECEMBER 14, 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 (CCH) was held on September 11, 2017, in (city), Texas, with (hearing officer) presiding as the administrative law judge (ALJ). The ALJ resolved the sole disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 1st quarter, June 15 through September 13, 2017.

The claimant appealed the ALJ's determination, contending that the ALJ imposed an incorrect burden of proof to establish a total inability to work under 28 TEX. ADMIN. CODE § 130.102(d)(1)(E) (Rule 130.102(d)(1)(E)). The respondent (self-insured) responded, urging affirmance of the ALJ's determination.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), which resulted in an impairment rating (IR) of 15% or greater; the claimant has not commuted any portion of his impairment income benefits (IIBs); and the qualifying period for the 1st quarter was February 21 through May 22, 2017. The claimant testified he was injured in a motor vehicle accident.

The SIBs issue listed on the Benefit Review Conference (BRC) Report is as follows:

Is the [c]laimant entitled to [SIBs] for the [1st] quarter, [June 15 through September 3, 2017]?

After the conclusion of the CCH the ALJ notified the parties that the disputed issue on the BRC report was incorrect, and the parties agreed to amend the issue to state the following:

Is the claimant entitled to SIBs for the 1st quarter, June 15 through September 13, 2017?

Rule 130.101 provides, in part, that the 1st quarter is the 13 weeks beginning on the day after the last day of the IIBs period, and that the qualifying period ends on the 14th day before the beginning date of the quarter and consists of the 13 previous consecutive weeks. The evidence established that the claimant's date of maximum medical improvement is February 15, 2015, and that his IR is 40%. The parties

stipulated that the qualifying period for the 1st quarter began on February 21 through May 22, 2017. Based on these dates and figures, the 1st quarter should begin on June 5, 2017, and end on September 3, 2017, rather than begin on June 15, 2017, and end on September 13, 2017.

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 in part that the Texas Department of Insurance, Division of Workers' Compensation (Division) commissioner by rule shall adopt compliance standards for SIBs recipients. 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 1st 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 evidence are letters from (Dr. P) and (Dr. G), dated April 17, 2017, and May 18, 2017, respectively, which were offered to serve as narrative reports to explain how the compensable injury caused a total inability to work. In her discussion of the evidence the ALJ stated that the claimant "failed to provide a single 'narrative report' which explained how the compensable injury caused a total inability to work during the qualifying period for the [1st] quarter."

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; *see also* APD 130821, decided May 29, 2013, and APD 170210, decided March 22, 2017. In APD 002724, decided January 5, 2001, the Appeals Panel 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, and APD 130821. Rule 130.102(d)(1)(E) does not require a single narrative report to establish a total inability to work. We hold that the ALJ has applied an incorrect standard in requiring a single narrative report to establish a total inability to work for purposes of SIBs. Accordingly, we reverse the ALJ's determination that the claimant is not entitled to SIBs for the 1st quarter and we remand the issue of whether the claimant is entitled to SIBs for the 1st quarter to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to determine the correct SIBs 1st quarter dates. The ALJ is also to weigh the evidence and apply the correct legal standard to determine whether or not the claimant is entitled to SIBs for the 1st quarter. The ALJ is to make findings of fact, conclusions of law, and a decision regarding the issue that are consistent with this decision. The ALJ is not to consider additional evidence on remand.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TEXAS DEPARTMENT OF TRANSPORTATION (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**JAMES BASS, EXECUTIVE DIRECTOR
125 E. 11TH STREET
AUSTIN, TEXAS 78701.**

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge