

APPEAL NO. 191788
FILED DECEMBER 4, 2019

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 September 3, 2019, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fifth quarter, June 26 through September 24, 2019. The appellant (carrier) appealed the ALJ's determination. The claimant filed a response to the carrier's appeal, urging affirmance of the decision.

DECISION

Reversed and rendered.

The parties stipulated, in part, that: on (date of injury), the claimant sustained a compensable injury with a 15% or greater impairment rating; the claimant has not commuted any portion of the impairment income benefits; the qualifying period for the fifth quarter of SIBs began on March 14, 2019 and ended on June 12, 2019; and the minimum number of job applications or work search contacts required pursuant to 28 TEX. ADMIN. CODE § 130.102(f) (Rule 130.102(f)) for the fifth quarter qualifying period is 3 per week for Harris County.

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951).

The claimant's theories of entitlement for fifth quarter SIBs are based on both a total inability to work for the first 3 weeks of the qualifying period, March 14 through April 3, 2019, and active work search efforts for the remaining weeks of the qualifying period. The claimant, who was employed as a mover, injured his left knee while lifting a motorcycle on (date of injury). He underwent a total knee replacement on December 28, 2016, that led to complications. The implant had to be removed on May 3, 2018, and a revision total knee replacement was performed on July 26, 2018.

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:

* * * *

(D) has performed active work search efforts documented by job applications; or

(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 ALJ's finding that the claimant provided documentation of at least 3 work search contacts each week of the fifth quarter qualifying period from April 4 through June 12, 2019 (weeks 4 through 13), is supported by sufficient evidence.

In Appeals Panel Decision (APD) 012286, decided November 14, 2001, the Appeals Panel held that "the narrative report from the doctor must specifically explain how the compensable injury causes a total inability to work." See *also* APD 032173, decided October 9, 2003, and APD 111188, decided October 10, 2011.

Regarding weeks 1 through 3 of the fifth quarter qualifying period, the claimant attached to his Application for [SIBs] (DWC-52) the June 19, 2019, report of (Dr. S), his treating doctor, as a narrative report from a doctor which purportedly explains how the compensable injury caused a total inability to work. Regarding the claimant's ability to work, Dr. S stated:

Due to his medical condition, he has been unable to work. He has difficulty with household chores and has not been able to participate in recreational activities. He is de-conditioned due to overall inactivity. He is unable to work in any capacity for the period of [March 14, 2019] to [March 28, 2019]. Due to his pain and functional limitations, he is unable to walk and stand for prolonged periods of time. He is unable to do heavy lifting, stoop or squat.

Dr. S's narrative does not specifically explain how the compensable injury caused a total inability to work in any capacity. Additionally, a Work Status Report (DWC-73) from Dr. S dated March 28, 2019, indicates that the claimant can return to work with restrictions as of that date.

In evidence is a report from (Dr. C), the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation to determine return to work for SIBs for the period of December 13, 2018, to the date of exam, March 19, 2019. Dr. C stated the following for this period:

The claimant has had ongoing issues regarding his knee surgeries, including an infection in his knee as a result of one of the knee surgeries. He is still currently under the care of an infectious specialist doctor and has not been able to return to work as a mover, a very heavy job classification. He should be able to return to work with restrictions, in a capacity that does not require the use of his left knee or leg.

Dr. C's report and attached DWC-73 indicate that the claimant can return to work in a restricted capacity; therefore, they constitute other records that show the claimant is able to return to work.

Because there is no narrative report from a doctor that specifically explains how the compensable injury caused a total inability to work in any capacity during the first 3 weeks of the fifth quarter qualifying period and because other records in evidence show that the claimant was able to return to work during this period, the claimant failed to demonstrate an active effort to obtain employment each week during the entire qualifying period. Accordingly, we reverse the ALJ's determination that the claimant is entitled to SIBs for the fifth quarter, June 26 through September 24, 2019, and render a new decision that the claimant is not entitled to SIBs for the fifth quarter, June 26 through September 24, 2019.

The true corporate name of the insurance carrier is **VANLINER 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.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge