

APPEAL NO. 000523

On February 15, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). The hearing officer resolved the disputed issue by deciding that appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 10th quarter. Claimant requests that we reverse the hearing officer=s decision and render a decision in her favor. Respondent (carrier) requests that the hearing officer=s decision be affirmed.

DECISION

Affirmed.

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. The new SIBs rules effective January 31, 1999, apply to this case.

The parties stipulated that on _____, claimant sustained a compensable injury to her low back and that she has a 19% impairment rating. There is no appeal of the hearing officer=s finding that claimant has not returned to work as a direct result of her impairment from her compensable injury. The 10th quarter was from October 20, 1999, to January 19, 2000, and that the qualifying period for that quarter was from July 8, 1999, to October 6, 1999.

Claimant testified that she injured her lumbar spine while working as a loan officer on _____; that she had lumbar spine surgery in 1996 and 1997; that Dr. N is her treating doctor; that her back pain has gotten worse; that she takes various medications; that Dr. N has not released her to return to work; that she knows of no job that she is physically capable of performing; and that she did not look for work during the qualifying period.

Dr. C evaluated claimant at carrier=s request in March 1999 and he wrote that claimant has chronic pain syndrome with symptom magnification and that claimant could return to sedentary or light work with restrictions, but that from a practical standpoint, since claimant had been off work for more than four years, it is highly unlikely that she will ever return to work and that she has developed chronic pain compensation behavior which it would be impossible to break her loose from and therefore Dr. C stated that he did not feel that claimant is a candidate to try to get back to any kind of significant work activity. In July 1999, Dr. N wrote that he had referred claimant to Dr. P for evaluation for consideration of a dorsal column stimulator, which has not been authorized by carrier, and that he does not feel that claimant is capable of obtaining or maintaining gainful employment of any kind. Dr. N noted in September 1999 that Dr. P and himself had recommended that claimant undergo a trial dorsal column stimulator. Dr. N again wrote in September and October 1999 that claimant is incapable of obtaining or maintaining gainful employment of any kind. Dr. N wrote that claimant has failed back surgery; however, Dr. C noted that x-rays showed what appeared to be a solid fusion and that an MRI in January 1998 did not reveal any significant protrusion or bulging of a disc at any

level. In response to written interrogatories, Dr. N wrote that he does not feel that claimant is able to work in any capacity. Written information on medications taken by claimant is in evidence. Videotapes of claimant taken on November 11, 1999, and January 15, 2000, show claimant driving and also show her walking outdoors at various places, sometimes using a cane and sometimes not using the cane.

The hearing officer found that during the qualifying period, claimant had some ability to perform some work and that she did not attempt in good faith to obtain employment commensurate with her ability to work. The hearing officer concluded that claimant is not entitled to SIBs for the 10th quarter. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence and determines what facts have been established from the evidence presented. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge