

APPEAL NO. 000715

On March 7, 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 issues by deciding that (appellant) claimant is not entitled to supplemental income benefits (SIBs) for the 19th quarter and that respondent (carrier) timely disputed claimant=s entitlement to SIBs for the 19th quarter. Claimant requests that the hearing officer=s decision that she is not entitled to SIBs for the 19th quarter be reversed and that a decision be rendered in her favor on that issue. Carrier requests that the hearing officer=s decision be affirmed. There is no appeal of the hearing officer=s decision that carrier timely disputed claimant=s entitlement to SIBs for the 19th quarter.

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 (Rule 130.102). The new SIBs rules effective January 31, 1999, apply to this case.

Claimant, who is 65 years of age, injured her left knee and left hand when she fell on _____, while working as a licensed vocational nurse (LVN). She had surgery on her knee and hand. The parties stipulated that carrier accepted liability for the _____, injury to claimant; that claimant has an impairment rating of 15% or more; that claimant did not commute impairment income benefits; and that the 19th quarter was from December 14, 1999, through March 13, 2000. The qualifying period for the 19th quarter was from September 1, 1999, through November 30, 1999 (the qualifying period). There is no appeal of the hearing officer=s finding that claimant=s impairment from the _____, injury was a cause of her reduced earnings during the qualifying period. Claimant contends that she met the requirement to make a good faith effort to obtain employment commensurate with her ability to work because she had no ability to work during the qualifying period.

Claimant testified that her treating doctor, Dr. C, told her that she is unable to work; that she takes medications for pain; that she is unable to work; that she has not returned to work since her injury; and that she did not look for any work during the qualifying period. Claimant noted on her Application for SIBs for the 19th quarter that she is not able to work in any capacity, that she is not enrolled in a vocational rehabilitation program, and that she made no job search efforts and had no earnings during the qualifying period. In a letter dated January 7, 2000, Dr. C summarized claimant=s medical condition and wrote that claimant is totally disabled for any type of work activity which is going to be reasonably available to her.@ Dr. X examined claimant at carrier=s request on December 2, 1999, and he reported that claimant

can do sedentary or very light-duty office work, but that she cannot go back to the work of an LVN.

During the qualifying period, Rule 130.102(d)(3) provided that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee 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. Rule 130.102(e) provided, in pertinent part, that, except as provided in subsections (d)(1), (2), and (3) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

The hearing officer found that the report of Dr. C did not show that claimant is unable to work in any capacity; that claimant was capable of working in a sedentary- to light-duty capacity, at least part time; and that claimant did not make a good faith effort to seek employment commensurate with her ability to work during the qualifying period. The hearing officer concluded that claimant is not entitled to SIBs for the 19th 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:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge