

APPEAL NO. 001781

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 June 13, 2000. The hearing officer determined that the appellant (claimant) is entitled to supplemental income benefits (SIBs) for the 13th, 14th, 15th, and 16th quarters except that she waived the right to receive SIBs for the 13th and 14th quarters and for the 15th quarter up to February 14, 2000, due to her failure to timely file her Application for Supplemental Income Benefits (TWCC-52) forms for those quarters. The claimant appeals the waiver determination. She contends that, based on her reading of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §§ 130.104 and 130.105 (Rules 130.104 and 130.105), she did not waive her right to receive SIBs for the 14th and 15th quarters because her TWCC-52 forms for those quarters were not due until after the respondent (carrier) had determined that she was not entitled to SIBs for the 13th quarter. The carrier urges that the claimant's contention misconstrues the cited rules and that the evidence sufficiently supports the challenged determinations.

DECISION

Affirmed.

In evidence is the claimant's TWCC-52 for the 12th quarter, a quarter not in issue, to which are attached several sheets reflecting that the claimant made approximately 50 job contacts during the filing period. Ms. W, the adjuster, signed the portion of the form reflecting that the claimant was entitled to SIBs for 12th quarter. Concerning the appealed waiver issue, the claimant testified that she did receive SIBs for the 1st through the 12th quarters; that she did not receive a TWCC-52 from the carrier for the 13th quarter; that she obtained a TWCC-52 from the Texas Workers' Compensation Commission and filled it in on August 8, 1999, but did not send the form to the carrier; that she received the TWCC-52 forms from the carrier for the 14th, 15th, and 16th quarters and completed, signed, and dated them; and that she did not send the forms to the carrier because she was under the impression that, if she could not work, she did not have to send the TWCC-52 forms to the carrier. She indicated she did not know where she got that impression. The claimant further stated that at the urging of Ms. W, she faxed all four TWCC-52 forms to the carrier on February 14, 2000.

In evidence are Ms. W's notes of May 3, 1999, stating that the carrier is currently paying 12th quarter SIBs, has been sending the claimant job leads through a vocational rehabilitation service, and has forwarded the claimant's TWCC-52 for the 13th quarter. Ms. W's note of December 22, 1999, states that the claimant had called about a week earlier stating that she was going to come to the office and bring in her applications for the 13th, 14th, and 15th quarters. Ms. W's note of January 26, 2000, states that the carrier has not heard from the claimant in regard to her applications for the past quarters and that the carrier sent her the 16th quarter application on December 30, 1999. Also in evidence are

Ms. W's letters of July 10, September 15, and December 30, 1999, to the claimant forwarding to her the TWCC-52 forms for the 14th, 15th, and 16th quarters.

The claimant further testified that she also completed, signed, and dated the TWCC-52 forms for the 14th, 15th, and 16th quarters but could not say whether she signed them on the dates she wrote next to her signatures. At another point, she stated that she filled all four forms out at one time. She wrote the dates of August 8, 1999, on the 13th quarter TWCC-52; November 20, 1999, on the 14th quarter TWCC-52; and February 14, 2000, on the 15th quarter TWCC-52. The handwritten date on the 16th quarter TWCC-52 is illegible, having been stamped over. All four forms bear a date stamp reflecting receipt by the carrier on February 14, 2000, and the carrier's Request for Benefit Review Conference (TWCC-45), dated February 15, 2000, states that all four TWCC-52 forms were received from the claimant on February 14, 2000.

Rule 130.104(b), effective January 31, 1999, provides, in part, that an injured employee claiming entitlement to SIBs for a subsequent quarter must send the carrier a TWCC-52 and that with the first monthly payment of SIBs for any eligible quarter and any carrier determination of nonentitlement, the carrier shall send the injured employee a copy of the TWCC-52 and the proper address to file the subsequent application. Rule 130.105(a), effective January 31, 1999, provides, in part, that "[a]n injured employee who does not timely file an [TWCC-52] with the insurance carrier shall not receive [SIBs] for the period of time between the beginning date of the quarter and the date on which the form was received by the carrier, unless the following apply: (1) the failure of the insurance carrier to timely mail the form to the injured employee as provided by §130.104 of this title (relating to Determination of Entitlement or Non-entitlement for Subsequent Quarters). . . ." Rule 130.104(f) provides that if the employee is entitled to SIBs for a subsequent quarter, the benefits begin to accrue on the later of the first day for the applicable quarter or the date the TWCC-52 is received by the carrier, subject to the provisions of Section 130.105.

The hearing officer found that the carrier did timely and properly provide the claimant with a TWCC-52 for the 13th quarter. Referring to the provisions of Rules 130.104 and 130.105 set out above, the claimant contends, apparently, that since the carrier did not make a determination of nonentitlement for the 13th quarter until February 15, 2000, it was not required to send the claimant the TWCC-52 forms for the subsequent quarters until after such nonentitlement determination and, therefore, that the claimant's TWCC-52 forms for the 14th and 15th quarters were, in fact, timely filed. The carrier responds that the claimant misconstrues the rules; that under the rules in effect at the time, the carrier was not obliged to forward the TWCC-52 forms to the claimant but did so anyway; and that the evidence sufficiently supports the hearing officer's determinations that the claimant "waived" the right to receive SIBs for the 13th and 14th quarters and for the 15th quarter up to February 14, 2000.

The hearing officer 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 (Garza v. Commercial Insurance Company of Newark, New Jersey, 508

S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. The hearing officer could infer from all the evidence that the carrier did indeed timely provide the claimant with her 13th quarter TWCC-52, as well as those for the 14th and 15th quarters, and that she, in turn, failed to timely file them with the carrier. We also view the claimant's construction of the rules she relies on as strained and without merit.

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Robert W. Potts
Appeals Judge