

APPEAL NO. 010542

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 February 16, 2001. The hearing officer decided the issues of entitlement to first through fifth quarter supplemental income benefits (SIBs) adversely to the appellant (claimant). The claimant has appealed the decision of the hearing officer, alleging that he was denied due process because he was not made aware of SIBs filing requirements; that the decision of the hearing officer is contrary to the "manifest" weight of the evidence; and that he was taking prescription medications, which altered his mental capacity, at the time he was making the application for SIBs. The respondent (carrier) has responded, requesting that the decision of the hearing officer be affirmed.

DECISION

Affirmed.

We note from the first page of Claimant's Exhibit No. 2, page 4 of an Application for Supplemental Income Benefits (TWCC-52), that the Texas Workers' Compensation Commission (Commission) notice of entitlement or nonentitlement for the first quarter of SIBs was dated June 11, 2000. The stipulated dates of the first SIBs quarter were October 15, 1999, through January 13, 2000. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.103(a) (Rule 130.103(a)), the Commission makes the determination of first quarter entitlement or nonentitlement for SIBs and, in fact, determined, in that case, that the claimant was not entitled to first quarter SIBs. This determination should have been made no later than the last day of the impairment income benefit period, October 14, 1999. There is no indication of a date that the claimant received the TWCC-52, and he denies being notified about SIBs (transcript, p. 18). The claimant did subsequently have conversations with a Commission employee at the field office, obtained forms from the employee, and submitted TWCC-52s for the second through fifth SIBs quarters. The only portion of the TWCC-52 in evidence for the first quarter is the above-mentioned page 4. We are unable to determine from the record before us whether, or when, the claimant completed an entire TWCC-52 for the first quarter, but our ultimate disposition of the case does not require that information. The claimant's second through fifth quarter TWCC-52s are dated "10-30-00," "10-27-00," "10-22-00," and "10-20-00," respectively. The claimant testified that Claimant's Exhibit No. 1 is the certified mail receipt showing that he sent the forms to the carrier on November 8, 2000, and showing receipt by the carrier on November 13, 2000.

Section 408.143 requires that after the Commission's initial determination of SIBs, the employee must file a TWCC-52 with the carrier and failure to do so relieves the carrier of liability for SIBs for the period during which the statement is not filed. The Appeals Panel has determined that, where the Commission fails to make an initial determination regarding SIBs due to no fault of the claimant, so that the claimant delays in applying for SIBs, the late filing of the application may result in a delay in payment of SIBs, but it does

not thereby extinguish the entitlement altogether. Texas Workers' Compensation Commission Appeal No. 941753, decided February 10, 1995. Such an application for SIBs may be considered timely if filed within a calendar quarter (three months) of the initial determination of SIBs eligibility. Appeal No. 941753. Further, the claimant is not relieved of his obligation to satisfy the statutory requirements for entitlement for SIBs notwithstanding the Commission's tardy first quarter determination. Texas Workers' Compensation Commission Appeal No. 951487, decided October 19, 1995, and Texas Workers' Compensation Commission Appeal No. 000662, decided May 12, 2000.

Based on our precedents, and the confusion surrounding notification to the claimant, we are not inclined to treat any of the applications as being filed untimely, and no issue of untimely filing was raised by the carrier. The employee has the burden of proving entitlement to SIBs for any quarter claimed. Texas Workers' Compensation Commission Appeal No. 941490, decided December 19, 1994.

The claimant asserts that he was unaware of the applicable rules for establishing entitlement to SIBs. Ignorance of the law does not excuse noncompliance with it. Appeal No. 951487, *supra*. We find no merit in this point on appeal.

Turning to the specifics of this case, the claimant proceeds on a total inability to work theory. The standard of a good faith job search, when a total inability to work is asserted, is found in Rule 130.102(d)(3) or (4), as applicable. There was evidence before the hearing officer from which she could determine that the claimant failed to make the good faith effort to obtain employment commensurate with his ability to work in that the claimant had not provided a narrative statement from a doctor specifically explaining how the claimant's injury caused a total inability to work and in that other records show that the claimant had the ability to work. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the credibility of the respective witnesses for that of the hearing officer.

The claimant's last point concerning prescription medications was not raised at the CCH and may not be raised for the first time on appeal.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Michael B. McShane
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge