

APPEAL NO. 011166
FILED JULY 03, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). Following a contested case hearing held on May 14, 2001. The hearing officer resolved the disputed issues by determining that the appellant's (claimant) compensable injury of _____, does not include an injury to the low back; that the respondent (carrier) has not waived its right to contest the compensability of the claimed low back injury; and that the claimant is not entitled to supplemental income benefits (SIBs) for the first and second quarters. The claimant has filed a request for review which globally challenges the sufficiency of the evidence to support the hearing officer's factual findings and the legal conclusions. The carrier's response urges that the evidence is sufficient to warrant our affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, does not include an injury to the low back and that the claimant is not entitled to SIBs for the first and second quarters. The claimant testified that while at work on _____, he fell through a rusted grate as he walked across it landing on his feet and injuring his right ankle and foot, his right arm, wrist, and elbow, and his left hip, as well as his back. The claimant's doctor, Dr. C, a board certified radiologist who has been practicing occupational medicine since 1997, testified that the claimant has disc bulging at the L4-5 and L5-S1 levels along with spinal canal stenosis, and that he feels that the axial loading and compression of the spine when the claimant fell worsened the claimant's lumbar spine defects. Dr. C acknowledged that if only the lumbar spine injuries were considered the claimant could perform light-duty work, but stated that when the effects of the claimant's narcotic medications are added to his physical problems, he cannot do so. Dr. C acknowledged the passage of some time before the low back is mentioned in the medical records as well as his not having awarded impairment for the lumbar spine when he assigned the claimant an impairment rating. He explained that he was initially focusing on the other injuries and that he had not assigned a rating for the spine because the carrier did not consider the spine to be part of the compensable injury.

The hearing officer fails to even mention, let alone make, any findings of fact on the three elements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130. 102(d)(4) (Rule 130.102(d)(4)) which apply to this case. The Appeals Panel has repeatedly urged hearing officers to make findings on the elements of Rule 130.102, as applicable. See, e.g., Texas Workers' Compensation Commission Appeal No. 991973, decided October 25, 1999. From the hearing officer's discussion of the evidence we can infer a finding that the claimant had some ability to work during the qualifying periods and that he did not look for employment.

The hearing officer, who is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), did not find persuasive Dr. C's testimony linking the claimant's bulging discs to his workplace injury nor, after viewing the carrier's surveillance videotape, did the hearing officer find persuasive the claimant's testimony concerning his inability to do any work whatsoever. We are satisfied that the challenged determinations of the hearing officer are not 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 decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge