

APPEAL NO. 011335  
FILED JULY 17, 2001

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 May 9, 2001. The hearing officer resolved the disputed issues by deciding that the appellant's (clamant) compensable injury of \_\_\_\_\_, does not extend to and include fibromyalgia, and that the claimant is not entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appealed and the respondent (carrier) responded.

**DECISION**

The hearing officer's decision is affirmed.

**ISSUE ON EXTENT OF INJURY**

The hearing officer did not err in determining that the claimant's compensable injury does not extend to and include fibromyalgia. Conflicting evidence was presented on this issue. The claimant's current treating doctor reported that the fibromyalgia resulted from the claimant's compensable injury; however, two other doctors who reviewed the claimant's medical records reported that it is not related to the compensable injury. 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 the conflicts in the evidence and determines what facts have been established. The hearing officer's decision that the claimant's compensable injury does not extend to and include fibromyalgia is supported by sufficient evidence, is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and is affirmed.

**SIBs ISSUE**

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the first quarter. 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 SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period, October 31, 2000, through January 29, 2001. Rule 130.102(d)(4) provides 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) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) 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 claimant testified that she is unable to work, and the claimant's current treating doctor reported that the claimant is unable to work due to her medical condition and pain. However, the claimant's former treating doctor released the claimant to sedentary work and a functional capacity evaluation done in April 2000 concluded that the claimant is capable of working at a light physical demand level. The parties stipulated that the claimant did not attempt to obtain employment during the qualifying period. The hearing officer found that the claimant had the ability to work during the qualifying period, and that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work during the qualifying period. The hearing officer determined that the claimant is not entitled to SIBs for the first quarter. The hearing officer's determination on the SIBs issue is supported by sufficient evidence, is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and is affirmed.

The hearing officer's decision and order are affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge