

APPEAL NO. 011564
FILED AUGUST 21, 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 June 12, 2001. With respect to the issue before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second quarter. In his appeal, the claimant essentially argues that the determinations that he had some ability to work in the qualifying period for the second quarter and that he is not entitled to SIBs are against the great weight of the evidence. In its response, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the second quarter. It is undisputed that the claimant reached maximum medical improvement with an impairment rating over 15%; that he had not commuted any portion of his impairment income benefits; that the qualifying period for the second quarter ran from August 12 to November 10, 2000; that the claimant was not employed and earned no wages during the qualifying period for the second quarter; and that the claimant did not look for work during the qualifying period for the second quarter.

At the hearing, the claimant argued that during the qualifying period for the second quarter he had no ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides that an injured worker 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 employee is able to return to work. The hearing officer determined that the claimant did not submit a narrative from a doctor that specifically explains how his injury causes a total inability to work and that other records were submitted that showed the claimant had some ability to work. Those determinations are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Thus, no sound basis exists for us to reverse those determinations, or the determination that the claimant is not entitled to SIBs for the second quarter, on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

At the hearing, the parties stipulated that Dr. C was the designated doctor selected by the Texas Workers' Compensation Commission (Commission) to assess whether the claimant has any ability to work and neither party raised a question as to propriety of that appointment. Pursuant to Section 408.151 and Rule 130.110, the opinion of a designated

doctor selected to determine if a claimant's condition has improved sufficiently to permit a return to work is entitled to presumptive weight unless the great weight of the other medical evidence is to the contrary. However, we note that Dr. C's report is not entitled to presumptive weight in this instance because it was received by the Commission on March 28, 2001, well after the ending date of the qualifying period for the second quarter and because the dispute as to whether the claimant's condition had improved sufficiently to allow him to return to work arose prior to the "second anniversary of the injured employee's initial entitlement to [SIBs]." See Texas Workers' Compensation Commission Appeal No. 002327, decided November 20, 2000, for a detailed discussion of Section 408.151 and Rule 130.110 and the prerequisites for giving a designated doctor's report on ability to work presumptive weight. There is no indication that the hearing officer gave presumptive weight to Dr. C's report, and his decision in that regard was correct in that the prerequisites for giving that report presumptive weight were not satisfied in this case.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge