

APPEAL NO. 011688
FILED AUGUST 28, 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 28, 2001. With regard to the issues before her, the hearing officer determined the following:

1. The respondent/cross-appellant (claimant) is entitled to supplemental income benefits (SIBs) for the 11th quarter, from July 30, 2000, through October 28, 2000;
2. The claimant is not entitled to SIBs for the 12th quarter, from October 29, 2000, through January 26, 2001; and
3. The claimant is not entitled to SIBs for the 13th quarter, from January 27, 2001, through April 27, 2001.

The appellant/cross-respondent (carrier) appealed, arguing that the hearing officer erred in determining that the claimant was entitled to SIBs for the 11th quarter. The claimant filed a cross-appeal, arguing that the hearing officer erred in determining that the claimant was not entitled to SIBs for the 12th and 13th quarters. The carrier filed a response to the claimant's cross-appeal, urging affirmance of the hearing officer's determinations regarding the 12th and 13th quarters. The claimant did not file a response to the carrier's appeal.

DECISION

Affirmed.

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). Rule 130.102(b) provides that an injured employee who has an impairment rating (IR) of 15% or greater and who has not commuted any impairment income benefits is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work. The hearing officer's finding that the claimant's unemployment during the applicable quarters was a direct result of the impairment from the compensable injury has not been appealed and will not be discussed further.

The parties stipulated that the claimant sustained a compensable injury on _____, and that the claimant reached maximum medical improvement on December 7, 1996, with an IR of 20%. Also, the parties stipulated that the qualifying period for the 11th quarter began on April 29, 2000, and ended on July 29, 2000; the qualifying period for the 12th quarter began on July 30, 2000, and ended on October 29, 2000; and, the

qualifying period for the 13th quarter began on October 30, 2000, and ended on January 29, 2001.

The claimant contends that he has met the good faith requirement by his total inability to work. The hearing officer did not err in determining that the claimant was entitled to SIBs for the 11th quarter, from July 30, 2000, through October 28, 2000. The hearing officer found that the narrative report from Dr. R dated April 24, 2000, specifically explained how the claimant's compensable injury caused a total inability to work during the qualifying period for the 11th quarter, and that there were no other records showing some ability to work during the qualifying period for the 11th quarter. The carrier contends that there was no medical report in evidence for the 11th quarter from the claimant's treating doctor and that Dr. R's medical report should not be considered as he is not the treating doctor. 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. We note that the Application for [SIBs] (TWCC-52) for the 11th, 12th and 13th quarters reflects Dr. R as the treating doctor.

The hearing officer did not err in determining that the claimant was not entitled to SIBs for the 12th quarter, from October 29, 2000, through January 26, 2001. The hearing officer determined that the criteria for Rule 130.102(d)(4) had not been met by the claimant because the claimant had some ability to work, and that "[a]dditional records were not offered to reflect whether the claimant needed medical treatment for his injury or whether the claimant could work at some capacity during the 12th quarter qualifying period." Also, the hearing officer determined that the letter from Dr. H gave no opinion as to the claimant's work status, and that the letter from Dr. R dated April 24, 2000, which was "offered for the 11th quarter was too remote in time" to be considered for the 12th quarter qualifying period. In addition, the TWCC-52 for the 12th quarter qualifying period reflects that the claimant did not document any job search efforts.

The hearing officer did not err in determining that the claimant was not entitled to SIBs for the 13th quarter, from January 27, 2001, through April 27, 2001. The hearing officer determined that the medical records in evidence from Dr. N dated December 12, 2000, and the functional capacity evaluation reflect that the claimant was able to perform sedentary work. The hearing officer determined that Dr. C's letter dated February 21, 2001, failed to specifically explain how the compensable injury caused a total inability to work for the 13th quarter qualifying period, and that the letter from Dr. R, dated April 24, 2000, was too remote in time to be considered for the 13th quarter qualifying period. Also, the hearing officer determined that the claimant failed to produce sufficient evidence to prove by a preponderance of the evidence that he made a good faith effort to obtain employment commensurate with his ability to work during the 13th quarter qualifying period. The TWCC-52 for the 13th quarter qualifying period reflects that the claimant documented only three job search efforts.

It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who 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)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The Appeals Panel 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. 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 hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **Liberty Mutual Fire Insurance Company** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 N. ST. PAUL ST., SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge