

APPEAL NO. 011786  
FILED AUGUST 10, 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 27, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first through the fourth quarters. The claimant appeals this determination on sufficiency grounds. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was not entitled to the first through fourth quarter SIBs. The claimant asserts that she had no ability to work and, therefore, did not make a job search during each of the qualifying periods. Section 408.142(a)(4) provides, in pertinent part, that an employee is entitled to SIBs if the employee has in good faith sought employment commensurate with her 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 employee has made a good faith effort to obtain employment commensurate with her 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. Whether the claimant had an ability to work during each of the qualifying periods was a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 951204, decided September 6, 1995. The hearing officer found that the claimant had some ability to work during each of the qualifying periods, and there is medical evidence to support this finding. Accordingly, the hearing officer's determination that the claimant is not entitled to SIBs for the first through the fourth quarters is 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 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **FREMONT COMPENSATION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

DISSENTING OPINION:

I respectfully dissent, and would reverse and render a decision that the claimant has shown inability to work by providing a very sufficient narrative under Rule 130.102(d)(4), and that there are no relevant, proximate records that show an ability to work. The narrative is more detailed than much of what we have seen in cases granting SIBs, and the FCE in this case is too remote to serve as an "other record" for most of the quarters in issue. (Indeed, had a hearing been held earlier on the initial quarters, the FCE would not have existed to be considered.) With the greatest respect to the majority herein, it seems clear to me that the evidence against the hearing officer's decision amounts to a great weight and preponderance, leaving aside that she has produced a "narrative" by even a somewhat demanding reading of that word. The manifest injustice in this case of the erroneous decision of the hearing officer is the permanent loss of entitlement to SIBs for a claimant that the legislature seems to have had in mind when SIBs was enacted.

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Susan M. Kelley  
Appeals Judge