

APPEAL NO. 011792  
FILED SEPTEMBER 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 July 11, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits for the 18th quarter. The claimant appealed on sufficiency of the evidence grounds. The respondent (carrier) replied that the evidence is sufficient.

DECISION

Affirmed.

At issue in this case is whether the claimant made the requisite good faith effort to obtain employment commensurate with her ability to work. The standard of what constitutes a good faith effort to obtain employment in cases of a total inability to work was specifically defined and addressed after January 31, 1999, in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)). Rule 130.102(d)(4) provides that the statutory good faith requirement may be met if the employee:

- (4) 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[.]

The hearing officer determined that the claimant was able to perform some type of work at the sedentary level of capacity and that the claimant did not provide a narrative report from a doctor which specifically explained how her compensable injury and the impairment therefrom caused a total inability to work.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer had to judge the credibility of the evidence before him in order to determine whether the evidence presented was sufficient to meet the criteria of Rule 130.102(d)(4). The questions of whether the claimant is unable to work and whether a narrative report specifically explains how the injury caused a total inability to work are factual questions. The hearing officer's finding that the claimant did have an ability to work is supported by the evidence, as are his findings that there is no narrative report explaining how the injury caused a total inability to work. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support this determination.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS WORKERS' COMPENSATION INSURANCE FUND** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6<sup>TH</sup> STREET  
AUSTIN, TEXAS 78701.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge