

APPEAL NO. 011870
FILED SEPTEMBER 18, 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 (CCH) was held on July 31, 2001. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the ninth quarter, and that the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c). The claimant has appealed the adverse determinations on sufficiency of the evidence grounds. The respondent (carrier) replied, urging affirmance.

DECISION

Affirmed.

During the qualifying period for the ninth quarter (November 24, 2000, through February 22, 2001), the claimant did not earn any wages and did not seek employment. He is claiming a total inability to work during the qualifying period. At issue in this case is whether the claimant made the requisite good faith effort to obtain employment commensurate with his 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[.]

As noted by the hearing officer, the treating doctor, Dr. P, provided testimony and a statement that "At this time due to the amputation and the chronicity of his symptoms, along with the pre-existing injury to his right upper extremity, [claimant] is not able to return to any type of gainful employment permanently. He should be considered disabled." Dr. P also testified that the claimant was unable to return to work due to his depression, left upper extremity condition, and his right upper extremity condition, which is not related to the compensable injury. Dr. P testified that the claimant would have a better chance at returning to work had it not been for his right upper extremity injury. Dr. P maintained that it was the combination of the claimant's psychological and physical conditions which render him unable to work. Approximately three months before the start of the qualifying period, the claimant was evaluated by Dr. R, who opined that the claimant is physically capable of returning to some sort of work. The hearing officer determined that Dr. R's report was a record showing that the claimant was able to perform some type of work at the sedentary level of capacity and that the testimony and statement of Dr. P did not meet the requirement of a narrative report from a doctor which specifically explained how the

claimant's 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 her 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 is her finding 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.

As to the issue of whether the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c), the parties stipulated that the claimant was found to not be entitled to SIBs for the sixth, seventh, and eighth quarters. This stipulation, coupled with the determination of non-entitlement for the ninth quarter, provided sufficient evidence to support the hearing officer's factual determination that the claimant has permanently lost his entitlement to additional income benefits.

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

**C T CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge