APPEAL NO. 011923
FILED SEPTEMBER 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 July 31, 2001. With respect to the single issue before her, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the second quarter. In its appeal, the appellant (carrier) argues that the hearing officer's determinations that the claimant satisfied the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) and that he is entitled to SIBs for the second quarter are against the great weight of the evidence. The appeal file does not contain a response from the claimant to the carrier's appeal.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is entitled to SIBs for the second quarter. She determined that the claimant satisfied the requirements of Rule 130.102(d)(4) by providing a narrative that specifically explains how the injury causes a total inability to work, and that no other record shows an ability to work. Those issues are factual determinations for the hearing officer. The hearing officer determined that the March 22, 2001, report from Dr. H, who performed an independent medical examination of the claimant, satisfied the narrative requirement of Rule 130.102(d)(4). In that report Dr. H stated:

> It would be my conclusion at this point that [claimant] will not resume the type of employment that he has done previously. He had worked in construction and had done just basically completely manual labor his entire life, and I see no reasonable likelihood the he will ever return to that. If he is ever to resume any employment, it would have to be more of a sedentary type occupation which would allow him frequent changing of positions, and with his current symptom state and some of the psychological overlay, I think it would be difficult for him to resume functional gainful employment on any full time basis.

The ombudsman assisting the claimant faxed the report back to Dr. H with the question "[d]oes this mean he cannot work at all at this time? [Emphasis in original.] Comments or clarification (if any)." In response to that request for clarification, Dr. H stated that he did not "believe [claimant] is able to work at this time, based on our visit and examination dated 3/22/01. I would consider him for sedentary work (1) if the right job were available and (2) he was retrained for such a position, this would be an eventual situation that does not exist at the present time." On April 17, 2001, the claimant underwent a functional capacity evaluation (FCE) to which he was referred by Dr. H. The FCE report concludes that "[d]ue to [claimant's] high level and pain and limitations, he would be unable to meet even

sedentary category of work requirements."

In arguing that this report does not satisfy the narrative requirement, the carrier cites Texas Workers' Compensation Commission Appeal No. 010897, decided May 30, 2001, and argues that "medical records cannot be conglomerated to form a narrative report which shows a total inability to work." We cannot agree with the assertion that that is what happened in this case. To the contrary, the ombudsman sought, and Dr. H provided, clarification of Dr. H's report, which is in no way prohibited. In addition, we find no merit in the assertion that the hand-written response was improperly considered by the hearing officer because it lacked sufficient "indicia of authenticity." It was a matter for the hearing officer to consider the significance, if any, of the fact that the hand-written notes were not signed or dated by Dr. H. The hearing officer was free to credit those statements based upon the evidence of the circumstances under which the clarification was sought, specifically, the claimant's testimony that the ombudsman faxed the report with the clarification request to Dr. H on the day of hearing concerning his entitlement to SIBs for the first quarter and that the report, with the handwritten response, was faxed back to the ombudsman. We cannot agree with the carrier's assertion that the authenticity of the handwritten response to the ombudsman's question was so compromised as to be entitled to no weight. Thus, the hearing officer's determination that Dr. H's report satisfied the narrative requirement of Rule 130.102(d)(4) will not be disturbed on appeal. The hearing officer was acting within her role as the fact finder in assessing the weight and credibility to be given to the evidence. The hearing officer's determination that the claimant satisfied the requirements of Rule 130.102(d)(4) is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust; thus, no sound basis exists for reversing that determination, or the determination that the claimant is 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).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **EXPLORER 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.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge