

APPEAL NO. 012028
FILED OCTOBER 3, 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 August 14, 2001. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter (May 4, 2001, through August 2, 2001). The claimant appealed, asserting that his lumbar spine MRI results have not been revealed yet. The respondent (carrier) replied, urging that the hearing officer's decision be affirmed.

DECISION

Affirmed.

The issue in this case is whether the claimant made the requisite good faith effort to obtain employment commensurate with his ability to work. The claimant contended that he has a total inability 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 claimant did not look for work at all during the qualifying period for the first quarter (January 20, 2001, through April 20, 2001). The hearing officer determined that there was a record which shows that the claimant was able to perform some light-duty work and that the claimant did not provide a narrative report from a doctor which specifically explained how his 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 the hearing officer's determinations.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **NORTHERN INSURANCE COMPANY OF NEW YORK** and the name and address of its registered agent for service of process is

**GEORGE MICHAEL JONES
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge