

APPEAL NO. 012434
FILED NOVEMBER 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 September 18, 2001. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 17th quarter. The appellant (carrier) requested review of that determination, arguing that the medical evidence from the claimant's treating doctor indicates that the claimant has some ability to work. The claimant responded, urging affirmance of the hearing officer's decision and order.

DECISION

Affirmed.

The claimant sought SIBs for the 17th quarter, taking the position that she was unable to work in any capacity during the qualifying period, January 10 through April 10, 2001. She presented medical records from her treating doctor, Dr. E, covering the time frame from October 20, 2000, through July 19, 2001. The hearing officer concluded that the claimant had provided the required medical narrative, which showed a total inability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)). The carrier presented a medical record from Dr. E dated January 5, 2001, which contains physical restrictions on the claimant's ability to work, and argued that this record shows that the claimant has some ability to work. The hearing officer specifically recognized and applied our previous decision in Texas Workers' Compensation Commission Appeal No. 002670, decided January 3, 2001. He considered the medical record of January 5, 2001, but was not persuaded that it showed an ability to work, and gave as his reasons that it was totally inconsistent with the other paragraphs in the same letter and that it was inconsistent with the other evidence from Dr. E, given both before and after January 5, 2001, which reflect that the claimant had no ability to perform numerous job functions.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate-reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** 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:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge