APPEAL NO. 012527
FILED DECEMBER 11, 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 27, 2001. She determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 10th and 11th compensable quarters because he had no ability to work during the corresponding qualifying periods. The appellant (carrier) contends on appeal that the claimant has not satisfied the requirements to establish entitlement to SIBs based on a total inability to work. The appeals file contains no response from the claimant.

DECISION

Affirmed.

Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

> An employee is entitled to [SIBs] if on the expiration of the impairment income benefits [IIBs] period computed under Section 408.121(a)(1) the employee:
>
> (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;
>
> (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
>
> (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
>
> (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) states that the "good faith" criterion will be met if the employee:

> 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 carrier contends that the requirements of Rule 130.102(d)(4) have not been satisfied in this case because the narrative report upon which the hearing officer relies is

insufficient to establish a total inability to work. The hearing officer determined that the written report of Dr. Z did not, in and of itself, constitute a narrative showing a total inability to work. However, she was satisfied that the report, coupled with Dr. Z's testimony at the hearing, was sufficient to constitute a narrative showing a total inability to work. We have previously stated that "by requiring a narrative, what seems critical is the explanation of how the injury causes a total inability to work rather than the form of that explanation." Texas Workers' Compensation Commission Appeal No. 001777, decided September 18, 2000. Upon review of the facts in this case, we perceive no error in the hearing officer's finding that the claimant provided a narrative showing his total inability to work through Dr. Z's written report and his testimony at the hearing.

The carrier also argues that the requirements of Rule 130.102(d)(4) have not been satisfied because the report of Dr. A constitutes a record showing that the claimant is able to return to work. We disagree. As the hearing officer points out in her decision, Dr. A opines in his report that the claimant "may be able to return to a light duty job," but also points out that "his restrictions are significant" in that he cannot lift, stoop, squat, bend at the waist, push, and pull. Additionally, the claimant "should be in a job description that will allow him to sit, stand and walk according to his comfort level and to be able to use a walking cane." The hearing officer found Dr. A's report to be "speculative" as to whether the claimant had an ability to work and was not persuaded that it constitutes a record showing an ability to work.

A finding of no ability to work is a factual determination for the hearing officer. Texas Workers' Compensation Commission Appeal No. 951204, decided September 6, 1995. 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. 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). We are satisfied that the evidence sufficiently supports the hearing officer's determination that, for the qualifying periods corresponding to the 10th and 11th SIBs quarters, the claimant established his entitlement to SIBs by providing a narrative showing his total inability to work and that no other record shows that he had an ability to work.

We briefly address the carrier's contention that it is impossible to determine whether the hearing officer considered all of the evidence, specifically, the video surveillance tape. The hearing officer is not required to detail all of the evidence both supporting and contradicting her determinations. *See* Texas Workers' Compensation Commission Appeal No. 93164, decided April 19, 1993 (Unpublished), and cases cited therein. The hearing officer states in her decision that her findings of fact and conclusions of law are based on

all of the evidence presented, regardless of whether a particular piece of evidence was specifically addressed in the decision.

The decision and order of the hearing officer are affirmed.

The true corporate name of the carrier is **AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

DISSENTING OPINION:

I respectfully dissent. The majority opinion sets out the good faith criterion required to comply with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) and need not be repeated here.

Regarding the requirement that the claimant provide a narrative from a doctor which specifically explains how the injury causes a total inability to work, even the hearing officer's Statement of the Evidence comments that the letter the claimant provided "alone would be insufficient to constitute" the required narrative report. The hearing officer, however, goes on to explain that Dr. Z testimony, which supplemented his report, was sufficient to constitute the required detailed narrative report. While Dr. Z's testimony did indicate the claimant's severe limitations, on cross-examination (page 25 of the transcript (TR)) Dr. Z appears to agree that the claimant could work three or four hours a day alternating sitting and standing. That testimony indicates that Dr. Z was only considering a return to full time preinjury work rather than considering the possibility of part-time work.

(TR page 23 “I don't think he would be able to return back to what he was doing before.”) However, the hearing officer can believe all, part, or none of the testimony of this witness.

Regarding the criterion that no other records show that the claimant is able to return to work, the carrier submits a report of Dr. A, wherein Dr. A states that the claimant “may be able to return to a light duty job . . . beginning for three or four hours per day” with certain restrictions and that the claimant “could be tried in this limitation for a period of four weeks and then perhaps increasing his hourly participation in work one hour per month until he reaches a maximum of eight hours.” The hearing officer objects to the words “may,” “could,” and “perhaps” as being “speculative” when, in fact, Dr. A was giving a thoughtful assessment of the claimant's ability and future prospects. I believe that the hearing officer’s finding that Dr. A's “report was insufficient to constitute a record showing that the Claimant was able to return to work” was against the great weight and preponderance of the evidence. I would have reversed the hearing officer’s decision and rendered a new decision that the claimant was not entitled to SIBs for the 10th and 11th compensable quarters.

Thomas A. Knapp
Appeals Judge