

APPEAL NO. 012579
FILED DECEMBER 13, 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 October 4, 2001. The hearing officer resolved the disputed issue by concluding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter from August 8, 2001, through November 6, 2001. Claimant appeals, arguing that the evidence did not support the determination of the hearing officer. Respondent (carrier) contends that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

We affirm.

Claimant contends that the hearing officer erred in determining that he had some ability to work and that he is not entitled to SIBs. However, claimant had the burden to prove that he had no ability to work during the qualifying period for the third quarter, and he was required to produce a narrative from a doctor which specifically explains how the injury causes a total inability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)). The hearing officer determined that the January 31, 2001, narrative from Dr. R did not contain such a specific explanation. This determination is not 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). Accordingly, claimant did not meet his burden to prove that he had no ability to work.

Claimant next contends that he was treated unfairly at the hearing. Our review of the record does not show any reversible error. Claimant was permitted to testify and offer evidence in this case. Claimant asserts that the hearing officer should not have found that he had an ability to perform light-duty work because two of carrier's exhibits, which contained evidence in this regard, were not admitted. As noted earlier in this decision, claimant had the burden to prove that he had no ability to work, and he did not meet this burden. Therefore, claimant is not entitled to SIBs because he had some ability to work. Claimant also did not make a weekly job search or otherwise show that he met the good faith requirement. It appears that the hearing officer may have found claimant could perform light-duty work based on the facts that (1) he found claimant could do work of some kind, (2) claimant was able to perform a job search, and (3) claimant testified that he was told that a functional capacity evaluation showed he could do light-duty work. In any case, we perceive no reversible error. Claimant complains that there is no evidence to support the hearing officer's determination that he did not participate in a Texas Rehabilitation Commission (TRC) program. However, on his Application for [SIBs] (TWCC-52), claimant checked a box indicating that he did not

participate in a TRC program. We perceive no error. Claimant complains that the hearing officer found that he was not participating in a vocational rehabilitation program sponsored by a private provider. However, it was claimant's burden to prove that he was participating in such a program. Because he did not offer evidence showing this, the hearing officer did not err in making this determination. Claimant contends that the hearing officer erred in stating that claimant had excellent range of motion (ROM) at the benefit review conference (BRC). It appears that the hearing officer meant to comment on claimant's apparent ROM at the hearing and not at the BRC. The BRC report does not mention ROM, and it is doubtful that the hearing officer would comment on it even if it did, as that is not evidence. Claimant complains that the hearing officer commented on his ability to perform certain movements at the hearing. However, it was not error for the hearing officer to consider claimant's apparent physical abilities at the hearing. We perceive no error.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge