

APPEAL NO. 012589
FILED DECEMBER 5, 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 1, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first quarter, from July 16, 2001, through October 14, 2001.

The claimant appealed, arguing that the hearing officer erred in determining SIBs. The respondent (carrier) filed a response, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant had a compensable injury on _____; that her impairment income benefits (IIBs) ended on July 15, 2001; that she reached maximum medical improvement on September 3, 2000, with a 15% impairment rating; that she did not elect to commute any portion of her IIBs; that the first quarter determination of SIBs was made by the Texas Workers' Compensation Commission on July 15, 2001; that the qualifying period for the first quarter of SIBs began April 3, 2001, and ended on July 2, 2001; and that the first quarter of SIBs began on July 16, 2001, and continues through October 14, 2001.

The claimant testified that on _____, she slipped and fell at work and injured her knees. The claimant had surgery to her left knee on November 11, 1999, and surgery to her right knee on November 29, 1999; a second surgery to her right knee is pending. The claimant contends that she is unable to work since she cannot sit or stand for long periods of time and that she is taking medication for the pain to her knees. She stated that the Texas Rehabilitation Commission was not able to assist her because her treating doctor had not released her to work and that she did not search for employment during the qualifying period for the first quarter of SIBs.

The claimant contended that she had a total inability to work at any job since April 3, 2001, based on her treating doctor's letter dated September 10, 2001. 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 hearing officer determined that the claimant had some ability to work based on the medical reports in evidence and that the claimant did not provide a narrative from a doctor which specifically explained how the compensable injury caused a total inability to work. The evidence sufficiently supports the hearing officer's determination that the claimant is not entitled to SIBs for the first quarter.

It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who 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.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). 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 **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 N. ST. PAUL ST.
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge