

APPEAL NO. 012598
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. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth, seventh, eighth, and ninth quarters. The claimant appealed, arguing that the hearing officer erred in determining SIBs entitlement. The respondent (carrier) did not file a response.

DECISION

Affirmed.

The parties stipulated that the qualifying periods at issue began on August 11, 2000, and ended on August 9, 2001, and that the claimant sustained a compensable injury on _____. The claimant testified that she did not search for employment because of her neck and shoulder injury. 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 any of the qualifying periods in dispute. The claimant states that she was unable to acquire a narrative medical report from her treating doctor because the treating doctor told her that there was nothing else he could do for her. The claimant contends that she has a total inability to work in any capacity.

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) and (5) provide 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; or
- (5) has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment.

The hearing officer determined that the claimant did not make a good faith effort to obtain employment commensurate with her abilities, that the claimant did not show she was unable to perform any type of work in any capacity for the sixth, seventh, eighth, and ninth SIBs quarters, 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 determinations that the claimant is not entitled to SIBs for the sixth, seventh, eighth, and ninth quarters.

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 **CLARENDON NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**UNITED STATES CORPORATION COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Phillip F. O'Neill
Appeals Judge