

APPEAL NO. 013059  
FILED FEBRUARY 5, 2002

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 November 27, 2001. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter, and that the respondent (self-insured) did not waive its right to contest the claimant's entitlement to SIBs for the first quarter. The claimant appealed, arguing that the hearing officer erred in determining that the claimant was not entitled to SIBs for the first quarter and that the self-insured received notice of the entitlement to SIBs for the first quarter on August 27, 2001. The self-insured filed a response, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_, with an impairment rating of 28%; that the claimant had not commuted any portion of the impairment income benefits; and that the first quarter of SIBs began on August 30, 2001, and continued through November 28, 2001, and the qualifying period began on May 17, 2001, and continued through August 15, 2001.

The hearing officer did not err in determining that the claimant did not meet the "good faith search for employment" requirement for SIBs entitlement. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), as applied to this case, defines good faith as follows:

Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work 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 was persuaded by the claimant's testimony that he did not search for employment or enroll in a rehabilitation program during the qualifying period for the first quarter; that a medical report in evidence from the claimant's treating doctor did not provide the "necessary specificity to explain how the injury caused the Claimant to have a total disability to work" as required of a narrative report; and that the medical records in evidence of the self-insured's required medical examination doctor showed that the

claimant had a limited ability to work. The evidence sufficiently supports the hearing officer's determination that the claimant is not entitled to SIBs for the first quarter.

The hearing officer did not err in determining that the self-insured received the notice of entitlement to SIBs on August 27, 2001. Pursuant to Rule 130.108, if the self-insured disputes a Texas Workers' Compensation Commission (Commission) finding of entitlement to, or amount of, SIBs for the first quarter, the self-insured shall request a benefit review conference (BRC) within 10 days after receiving the Commission's determination of entitlement. The hearing officer commented that the usual and customary date stamp provided by the Commission was not shown on the document. Review of the record indicates that the Notice of Entitlement to [SIBs] for the First Quarter was dated August 24, 2001. Rule 102.5(d) provides that unless the great weight of evidence indicates otherwise, the self-insured is deemed to have received the Notice of Entitlement to [SIBs] for the First Quarter on the first working day after the date the written communication was placed in the self-insured's Austin representative box, or, in this case, Monday, August 27, 2001. Working day is defined as any day, Monday through Friday, other than a national holiday as defined by Texas Government Code, Section 662.003(a) and the Friday after Thanksgiving Day, December 24 and December 26. Rule 102.3(b). The last day for the self-insured to dispute the SIBs entitlement by requesting a BRC was Thursday, September 6, 2001. Review of the record indicates that the Commission received the self-insured's dispute on September 6, 2001. The evidence sufficiently supports the hearing officer's determination that the self-insured did not waive its right to contest the claimant's entitlement to SIBs for the first quarter as the self-insured filed a timely dispute of SIBs entitlement.

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 **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR  
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
THE STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777.**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Edward Vilano  
Appeals Judge