

APPEAL NO. 020021
FILED FEBRUARY 7, 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 December 11, 2001. With respect to the single issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth quarter. The claimant appeals, essentially arguing that the hearing officer's determinations that he had some ability to work and that he is not entitled to fourth quarter SIBs are against the great weight of the evidence. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that he reached maximum medical improvement on November 30, 1998, with an impairment rating of 34%; that the claimant did not elect to commute any portion of his impairment income benefits; that the fourth quarter of SIBs ran from August 14 to November 12, 2001; and that the qualifying period for the fourth quarter of SIBs was from May 1 to July 31, 2001. The claimant's treating doctor testified that the claimant is "not able to hold gainful employment" and that he is "unemployable." In addition, the claimant introduced written reports from the treating doctor, stating that because of the claimant's "chronic medical condition and his failure to respond to medical treatment and conservative therapy, [claimant] is permanently disabled and no longer able to work." The carrier introduced a surveillance videotape of the claimant taken on July 24, 2001, which depicts the claimant engaged in building a closet to enclose a hot water heater. The claimant is shown lifting plywood and 2 x 4's, using various hand tools, painting, and performing other tasks, over nearly an eight-hour period.

At issue in this case is whether the claimant satisfied the good faith requirement for SIBs entitlement by establishing that he had no ability to work during the qualifying period corresponding to the fourth quarter pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)). The hearing officer determined that the claimant failed to meet his burden of proof under Rule 130.102(d)(4). Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination, or the determination that the claimant is not entitled to SIBs for the fourth quarter, on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **EMPLOYERS GENERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT RAMSOWER
1601 ELM STREET, SUITE 1600
DALLAS, TEXAS 75221-9010.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Edward Vilano
Appeals Judge