

APPEAL NO. 020289
FILED MARCH 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 January 8, 2002. With respect to the issues before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter and that the claimant's compensable injury extends to the lumbar spine. The claimant appealed, challenging the hearing officer's determination that he is not entitled to first quarter SIBs. In its response, the respondent (carrier) contends that the claimant's appeal was not timely filed. In the alternative, the carrier urges affirmance. The carrier did not appeal the hearing officer's determination that the claimant's compensable injury extends to the lumbar spine and that determination has, therefore, become final. Section 410.169.

DECISION

Affirmed.

Initially, we address the carrier's contention that the claimant did not timely file his appeal. Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was distributed on January 10, 2002. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the claimant was deemed to have received the hearing officer's decision five days later, or on January 15, 2002. Section 410.202, was amended June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal period. As such, the claimant had until February 6, 2002, to file a timely appeal in this instance based on the January 15, 2002, deemed date of receipt. The claimant's appeal was sent by Federal Express on February 5, 2002, and received by the Commission on February 6, 2002. Thus, it was timely filed.

The hearing officer did not err in determining that the claimant is not entitled to first quarter SIBs. The claimant asserted at the hearing that he had no ability to work during the qualifying period for the first quarter. In his statement of the evidence, the hearing officer noted that the claimant did not provide a narrative report that specifically explained how the claimant's injury caused a total inability to work and that another medical record indicated that the claimant had some ability to work. The issue of whether the claimant satisfied the requirements of Rule 130.102(d)(4) presented a question of fact for the hearing officer to resolve. Pursuant to Section 410.165(a), the hearing officer is the sole judge of the weight and credibility of the evidence. As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence, including the medical evidence, and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record reveals that the hearing officer's determination that the claimant did not sustain his burden of proving his entitlement to SIBs for the first quarter under Rule

130.102(d)(4) is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. As such, no basis exists for us to reverse the hearing officer's decision on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant also asserts error in the hearing officer's having excluded Claimant's Exhibit No. 12. The claimant acknowledged at the hearing that he did not exchange the exhibit until the day before the hearing. The claimant did not provide any explanation for his failure to exchange the exhibit earlier and, as a result, we find no merit in the assertion that the hearing officer erred in sustaining the carrier's objection to the exhibit.

The decision and order of the hearing officer are affirmed.

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

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge