

APPEAL NO. 020748
FILED MAY 16, 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 February 27, 2002. The hearing officer resolved the sole issue before him by determining that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 17th compensable quarter. The appellant (carrier) appealed, challenging, on sufficiency grounds, the adequacy of the claimant's medical "narrative" and further challenging the hearing officer's disregarding a medical report offered by the carrier as an "other record" showing that the claimant had an ability to work. The claimant filed a response, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is entitled to SIBs for the 17th compensable quarter.¹ The parties did not dispute that the claimant had an impairment rating of 15% or greater; that she had not commuted any impairment income benefits; and that she earned less than 80% of her average weekly wage during the qualifying period in issue. In addition, the hearing officer found that the claimant's unemployment during the qualifying period was a direct result of her compensable injury and that she was unable to work during the qualifying period for the 17th quarter.² See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b)(1) (Rule 130.102(b)(1)) (general eligibility requirements). The claimant proceeded on a "total inability to work" theory to meet the "good faith" requirement, and introduced the records of her treating doctor as a narrative in compliance with Rule 130.102(d)(4).³ The carrier contends that the claimant's doctor's records contain only conclusory statements and thus do not meet the "narrative report" requirement. Further, the carrier introduced a record from a carrier-selected reviewing doctor that purports to show that the claimant could at least work in a sedentary capacity. The hearing officer determined that there was a narrative report for the purposes of the rule. Further, the hearing officer decided to disregard the reviewing doctor's report as an "other record" because the doctor relied upon physical therapy records too remote in time from the qualifying period, and because the reviewing doctor did not definitively claim

¹The 17th quarter began November 16, 2001, and ended February 14, 2002.

²The qualifying period for the 17th quarter began August 4, 2001, and ended November 2, 2001.

³Rule 130.102(d)(4) provides that a claimant has made a good faith effort to obtain employment commensurate with her ability if she has been unable to perform any type of work in any capacity, has presented a narrative report from a doctor which specifically explains how her injury causes her total inability to work, and no other records show she is able to return to work.

that the claimant could work. The reviewing doctor only wrote that more diagnostics needed to be performed to determine the claimant's functional capacity. Ultimately, the hearing officer found that the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period.

The hearing officer is the sole judge of the weight and the credibility to be given the evidence. Section 410.165(a). While the carrier introduced evidence it believed was proof to the contrary, upon our review of the record, we conclude that the hearing officer's determination that the claimant is entitled to SIBs for the 17th compensable quarter, is sufficiently supported by the evidence, and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 001360, decided July 27, 2000.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
COMMODORE 1
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge