

APPEAL NO. 021122  
FILED JUNE 21, 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 April 2, 2002. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter. The claimant appealed. No response was received from the carrier.

DECISION

The hearing officer's decision is affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the third quarter, which was from October 20, 2001, through January 18, 2002. The claimant claimed that he had no ability to work during the qualifying period. It is undisputed that the claimant did not work or look for work during the qualifying period.

The hearing officer found that a December 4, 2001, report of a functional capacity evaluation (FCE) that was performed during the qualifying period was a record which showed that the claimant had some ability to work during the qualifying period. See Rule 130.102(d)(4). The report of the FCE placed the claimant in the sedentary work category. The hearing officer found that the claimant was "not unable to perform any type of work in any capacity" during the qualifying period. We take this finding to mean that the claimant was able to perform some type of work during the qualifying period. The hearing officer further found that the claimant did not look for employment commensurate with his ability to work during the qualifying period and concluded that the claimant is not entitled to SIBs for the third quarter. The fact that the claimant testified that he did not obtain a copy of the FCE report until after the qualifying period had ended would not preclude the hearing officer from determining that it was a record that showed that the claimant had some ability to work. See Texas Workers' Compensation Commission Appeal No. 011349, decided August 1, 2001, wherein it was noted that in response to comments regarding former Rule 130.102(d)(3), which was renumbered Rule 130.102(d)(4) effective November 28, 1999 (the no-ability-to-work SIBs provision), the Texas Workers' Compensation Commission noted that the language of the provision is tied to the ability to work and not to any "notice" requirement.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against

the great weight and preponderance of the evidence as to be clearly wrong and unjust. 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 **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**ROBERT PARNELL  
8144 WALNUT HILL LANE, SUITE 1500  
DALLAS, TEXAS 75231.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge