

APPEAL NO. 021173
FILED JUNE 14, 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 5, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fifth quarter.

The claimant appealed, contending that the medical evidence supported a finding that he had a total inability to work. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) through a total inability to work as set out in Rule 130.102(d)(4). The hearing officer's finding that the claimant's unemployment was a direct result of his impairment has not been appealed and will not be addressed further.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative 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 determined that the claimant had some ability to work during the qualifying period and that determination is supported by the evidence. We further note that the reports submitted by the claimant to satisfy the criteria of Rule 130.102(d)(4), although labeled "Narrative Report/[SIBs]" and containing a form statement that "[t]he patient was unable to work in any capacity during the period specified above" then has a laundry list of 11 check off boxes and concludes that the checked items "caused a total inability to work." Such check off forms do not explain how the injury causes a total inability to work. In fact, the check off box "Disc herniation or lesion and associated residual symptoms" which are, as the carrier noted, a condition or diagnosis. Certainly not every disc herniation results in a total inability to work as the form would indicate. Also in evidence is a functional capacity evaluation performed less than two weeks after the end of the qualifying period which contains notations of positive Waddell's signs and could be interpreted as an "other record" showing an ability to work. The hearing officer's determination regarding the ability to work is supported by the evidence.

The claimant, in his appeal, seems to indicate that he had requested a different hearing officer. Nothing in our review of the record before us indicates an abuse of discretion on the part of the Texas Workers' Compensation Commission in that regard.

After review of the record before us and the complained-of determination, we have concluded that there is sufficient support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge