

APPEAL NO. 021351
FILED JULY 8, 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 (CCH) was held on May 2, 2002. The hearing officer resolved the disputed issues by concluding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 4th, 6th, and 7th quarters and that the claimant is entitled to SIBs for the 8th, 9th, and 10th quarters. The claimant appeals the determination of nonentitlement for the 4th, 6th, and 7th quarters. The claimant attached evidence to his appeal, including duplicates of items admitted at the CCH and one item which was specifically excluded at the CCH. In its response, the respondent (carrier) argues that the hearing officer's determinations are supported by the evidence.

DECISION

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 attempted in good faith to obtain employment commensurate with his ability to work during the qualifying periods for the 4th, 6th, and 7th quarters. The claimant claimed that he had no ability to work during the qualifying periods and it is undisputed that he did not work or look for work during the qualifying periods at issue. The hearing officer determined that the claimant failed to prove that he was unable to perform any type of work in any capacity during the qualifying periods of the 4th, 6th, and 7th quarters under the provisions of Rule 130.102(d)(4), and that the claimant did not attempt in good faith to obtain employment commensurate with his ability to work during the referenced qualifying periods. The hearing officer additionally determined that the claimant did not participate in any full-time rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) or by a vocational consultant during the qualifying periods at issue. Consequently, the hearing officer concluded that the claimant is not entitled to SIBs for the 4th, 6th, and 7th quarters.

The claimant argues on appeal that he has been "considered full time" in a vocational rehabilitation program sponsored by the TRC as of May 8, 2001, and that the reports of the carrier-selected physician who performed a required medical examination are fabricated. However, the record reflects that the claimant applied for vocational rehabilitation services on May 8, 2001, and was not determined to be eligible for such services until June 5, 2001, a date outside the referenced qualifying periods. The claimant attached a transcription which was excluded at the CCH, and has not advanced any valid argument as to why it should now be considered on appeal. As a general rule, the Appeals Panel considers only the record developed at the CCH, the request for review and the response thereto. Section 410.203. The transcription will not be considered for the first time on appeal.

Conflicting evidence was presented at the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier 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).

We affirm the decision and order of the hearing officer.

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

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

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge