

APPEAL NO. 021505
FILED JULY 19, 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 21, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third and fourth quarters. The claimant appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision is affirmed.

The claimant contends that the hearing officer committed reversible error in not finding that she had good cause for not exchanging, until the date of the CCH, a May 13, 2002, report of the treating doctor and in excluding that exhibit from evidence. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)) pertains to the parties' exchange of documentary evidence. In order to show reversible error in the admission or exclusion of evidence it must be shown that the evidentiary ruling was in error and that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Texas Workers' Compensation Commission Appeal No. 91003, decided August 14, 1991. The excluded report is essentially cumulative of other reports from the treating doctor that were in evidence. We conclude that the claimant has not shown that the hearing officer abused her discretion in excluding the report or that that ruling constituted reversible error.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying periods for the third and fourth quarters. It is undisputed that the claimant neither worked nor looked for work during the qualifying periods. The claimant contended that she had no ability to work during the qualifying periods. 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 report 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. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

The claimant appeals the hearing officer's findings that she did not provide a narrative report from a doctor which specifically explained how the injury caused a total inability to work during the qualifying periods, that other records showed that the

claimant was able to work during the qualifying period for the fourth quarter, and that the claimant was able to work during the qualifying period for the fourth quarter. We conclude that the appealed findings, and the hearing officer's determination that the claimant is not entitled to SIBs for the third and fourth quarters, are supported by sufficient evidence and are 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). Having found that the claimant failed to provide a narrative report from a doctor which specifically explained how the injury caused a total inability to work, the hearing officer's finding that the claimant was not able to work during the qualifying period for the third quarter is untenable. However, the hearing officer did not err in determining that the claimant is not entitled to SIBs for the quarters in issue based on the appealed findings. See Texas Workers' Compensation Commission Appeal No. 021053, decided June 6, 2002.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(CARRIER)** and the name and address of its registered agent for service of process is

**FF
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge