

APPEAL NO. 021627
FILED JULY 26, 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 June 5, 2002. With respect to the issue before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth quarter. In his appeal, the claimant argues that the hearing officer erred in determining that he is not entitled to SIBs for the fourth quarter. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant contended that he had no ability to work during the relevant qualifying period because he was unable to perform any activities that involved lifting, bending, or stooping. In addition, the claimant relied on two functional capacity evaluations, one performed by his treating doctor and the other performed by the carrier's doctor, to demonstrate that his physical capacity is below sedentary level to support his inability-to-work argument. At the hearing, the parties stipulated that the qualifying period for the fourth quarter was from December 9, 2001, through March 9, 2002, and that the fourth quarter was from March 23 to June 21, 2002.

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). 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 hearing officer did not err in determining that the claimant did not satisfy the good faith requirement in the qualifying period for the fourth quarter of SIBs because he failed to prove that he had no ability to work and did not look for work every week of the qualifying period. The hearing officer was not persuaded that the evidence presented by the claimant was sufficient to satisfy the requirements of Rule 130.102(d)(4). Specifically, the hearing officer noted that there were other records that showed an ability to work. Nothing in our review of the hearing officer's determination in that regard reveals that it is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb that determination, or

the determination that the claimant is not entitled to SIBs for the fourth quarter, on appeal. 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 **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN
ACE USA
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200
IRVING, TEXAS 75063.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Roy L. Warren
Appeals Judge