

APPEAL NO. 022057
FILED SEPTEMBER 24, 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 July 10, 2002. The hearing officer resolved the sole disputed issue by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the ninth compensable quarter. The claimant appealed on sufficiency grounds. The claimant also argued that the narrative report requirement of Rule 130.102(d)(4) was inconsistent with what was required by the statute at Section 408.143 and violative of due process of law. The respondent (self-insured) responded, requesting affirmance.

DECISION

Affirmed.

We first address the claimant's legal argument of a conflict between the rule and the statute and the due process argument. We rejected these same arguments in Texas Workers' Compensation Commission Appeal No. 001607, decided August 21, 2000, stating as follows:

We have stated many times previously that the Appeals Panel does not resolve constitutional questions. The claimant may feel that raising these issues before the Appeals Panel is necessary to preserve them for judicial review. Whether this is the case or not is a question for the courts, as is the constitutionality of Rule 130.102(d). The claimant argues that Rule 130.102(d) is inconsistent with the 1989 Act and its adoption was improper under the Administrative Procedures Act. These are also issues beyond the scope of our review, but matters for the courts to consider. We will consider the arguments of the claimant upon which we have authority to rule, which are those dealing with whether there is sufficient evidence to support the factual findings of the hearing officer.

The hearing officer did not err in determining that the claimant was not eligible for ninth quarter SIBs.¹ The parties stipulated that the claimant sustained a compensable injury on _____, that she had a 23% impairment rating, that she reached maximum medical improvement on December 8, 1998, and that she had not commuted her impairment income benefits. The hearing officer found that the claimant did not return to work during the qualifying period for the ninth quarter as a direct result of her impairment. The claimant did not testify, but proceeded on the theory that she was totally unable to work during the qualifying period for the ninth quarter. The hearing officer decided, however, that the claimant's treating doctor's notes did not constitute a "narrative" as required by the rule (as she found them conclusory), and that there were

¹ The qualifying period for the ninth quarter ran from December 19, 2001, through March 19, 2002, and the ninth quarter ran from April 3, 2002, through July 2, 2002.

other records”, including a somewhat equivocal functional capacity evaluation, indicating that claimant may have some ability to work.

The hearing officer is the sole judge of the weight and the credibility to be given the evidence. Section 410.165(a). The hearing officer resolved the disputed issue in the self-insured’s favor. While the claimant argued a different interpretation of the evidence, we conclude that the hearing officer’s determination is supported by the evidence, and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers’ Compensation Commission Appeal No. 001360, decided July 27, 2000.

The hearing officer’s decision and order are affirmed.

The official name of the self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

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

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Veronica Lopez
Appeals Judge