

APPEAL NO. 022080
FILED SEPTEMBER 23, 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 16, 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 respondent (self-insured) responded, arguing that the claimant's request for review was untimely and that the hearing officer's decision was supported by the evidence.

DECISION

Affirmed.

As to the carrier's assertion that the claimant's appeal is untimely, we refer the carrier to Section 410.202(d), amended effective June 17, 2001, to provide that Saturdays, Sundays, and holidays listed in Section 662.003, Texas Government Code, are not included in the computation of time in which a request for an appeal must be filed. The assertion of untimeliness is without merit.

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 he had a 27% impairment rating, that he reached maximum medical improvement on December 28, 1998, and that he had not commuted his 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 his impairment. The claimant's testimony was confusing regarding whether he sought other employment, but he proceeded on the theory that he 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 Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.102(d)(4) (Rule 130.102(d)(4)), and that there were "other records" indicating that claimant had some ability to work during the qualifying period.

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.

¹ The qualifying period for the ninth quarter ran from December 2, 2001, through March 3, 2002, and the ninth quarter ran from March 16, 2002, through June 15, 2002.

The hearing officer's decision and order are affirmed.

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

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

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge