

APPEAL NO. 022116
FILED SEPTEMBER 30, 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 22, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 11th through the 17th quarters. The claimant appealed on sufficiency of the evidence grounds. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was not entitled to SIBs for the 11th through the 17th quarters, from November 15, 2000, through August 13, 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). The claimant contended that he had no ability to work during the qualifying periods in dispute. 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 is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The hearing officer commented in the Statement of the Evidence that the medical reports in evidence showed that the claimant had some ability to work, and that the claimant had a duty to look in good faith for employment commensurate with his abilities of sedentary light work, during the qualifying periods in dispute. We are satisfied that the challenged determinations of the hearing officer are 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer also did not err in determining that the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c) because he was not entitled to such benefits for 12 consecutive months. Given our affirmance of the determination that the claimant is not entitled to SIBs for the 11th through the 17th

quarters, the hearing officer properly determined that the claimant has permanently lost entitlement to SIBs under Section 408.146(c).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Veronica Lopez
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge