

APPEAL NO. 022117
FILED OCTOBER 7, 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 26, 2002. The hearing officer resolved the disputed issues by deciding (1) that the appellant's (claimant) compensable injury sustained on _____, did not extend to and include the diagnosed atrial fibrillation; (2) that the claimant is not entitled to supplemental income benefits (SIBs) for the first 1st through the 8th quarters; and, (3) that if the claimant had been found to be entitled to SIBs, the respondent (carrier) would be relieved of liability for payment of SIBs because of the claimant's failure to timely file an application for all of the 2nd, 3rd, 5th, 6th, and 7th quarters, and for a portion of the 4th and 8th quarters. The claimant appealed on sufficiency grounds. The carrier responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury sustained on _____, did not extend to and include the diagnosed atrial fibrillation. The claimant testified that the atrial fibrillation diagnosis and treatment came as a result of and after his compensable injury. The carrier presented medical records showing that the claimant had first been diagnosed with atrial fibrillation when he was in the hospital, for an unrelated bowel condition, in December of 1996, and argued that the claimant failed to show that the compensable injury exacerbated or aggravated the claimant's preexisting heart problem. The hearing officer was not persuaded that the claimant sustained his burden of proving the causal connection between his compensable injury and the atrial fibrillation. The hearing officer's determination in that regard is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse the determination that the atrial fibrillation is not part of the compensable injury. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer also did not err in determining that the claimant was not entitled to SIBs for 1st through 8th quarters.¹ The parties stipulated that the claimant sustained a compensable injury on _____, that he had a 34% impairment rating, and that he had not commuted his impairment income benefits. In an unappealed finding, the hearing officer determined that the claimant was unemployed as a direct result of his impairment. The claimant proceeded on a total inability to work theory and admitted to going on only a single job search, which proved unproductive, during all the qualifying periods. The carrier argued that the claimant's treating doctor failed to provide a narrative explaining a total inability to work and that there were other

¹ The qualifying periods ran from January 28, 2000, through January 24, 2002, and the quarters ran from May 11, 2000, through April 28, 2002.

records in evidence, including a May 8, 2000, functional capacity evaluation, showing that the claimant had some ability to work. The hearing officer implicitly determined that the claimant had some ability to work, and made an express finding that the claimant did not attempt in good faith to obtain employment commensurate with his ability to work. The hearing officer was not convinced that the evidence submitted by the claimant was sufficient to satisfy the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) to establish good faith based upon a total inability to work. Nothing in our review of the record reveals that the determination that the claimant did not satisfy the good faith requirement in any of the qualifying periods is so against the great weight of the evidence as to compel its reversal on appeal. Accordingly, we affirm that determination, and the determination that the claimant is not entitled to SIBs for the 1st through 8th quarters.

Finally, the hearing officer did not err in determining that the carrier would be relieved of liability for payment of SIBs, if the claimant had been determined to be entitled to those benefits, because of the claimant's failure to timely file an application for all of the 2nd, 3rd, 5th, 6th, and 7th quarters, and for a portion of the 4th and 8th quarters. The parties did not actively dispute that the carrier received the applications for the 2nd, 3rd, and 4th quarters on March 1, 2001, and for the 5th, 6th, 7th, and 8th quarters on April 15, 2002. Thus, even had the claimant been otherwise eligible for SIBs for the 1st through 8th quarters, the hearing officer properly determined that because the claimant did not timely file his applications, he would only have been eligible for a portion of the 4th and 8th quarters of SIBs.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL R. OLIVER, PRESIDENT
TEXAS MUTUAL INSURANCE COMPANY
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge