

APPEAL NO. 022559
FILED NOVEMBER 14, 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 (CCH) was held on September 3, 2002. The hearing officer determined that the appellant (claimant) is not entitled to the first or second quarters of supplemental income benefits (SIBs), from March 20 through September 17, 2002. The claimant appealed on sufficiency of the evidence grounds and disagrees with the dates of the first and second quarters of SIBs. The respondent (carrier) responded, urging affirmance. The claimant responded to the carrier's response urging reversal of the hearing officer's SIBs determinations.

DECISION

Affirmed.

In his appeal, the claimant asserts that he disagrees with the dates of the first and second quarters of SIBs. We note that both parties stipulated at the CCH that the qualifying period for the first quarter of SIBs began on December 6, 2001, and ended March 6, 2002; that the first quarter of SIBs began on March 20 and ended June 18, 2002; that the qualifying period for the second quarter of SIBs began on March 7 and ended June 6, 2002; and that the second quarter of SIBs began on June 19 and ended September 17, 2002. Section 410.166 provides that a written stipulation or agreement of the parties that is filed in the record or an oral stipulation or agreement of the parties that is preserved in the record is final and binding. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 147.4(b) (Rule 147.4(b)). The stipulation is supported by the Notice of Entitlement To SIBs for Quarter #1 (CS-22) dated April 11, 2002, that shows the dates for the first quarter of SIBs to begin on March 20, 2002, and end June 18, 2002, and for the second quarter of SIBs to begin on June 19, 2002, and end September 17, 2002.

The hearing officer did not err in determining that the claimant was not entitled to SIBs for the first and second quarters, from March 20 through September 17, 2002. Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and 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 determined that there were other records, including a videotape and functional capacity evaluation dated January 7, 2002, that showed that the claimant has some ability to work, and that the claimant failed to establish that he made a good faith effort to obtain employment commensurate with his ability to 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).

We affirm the hearing officer's decision and order.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Veronica Lopez
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge