

APPEAL NO. 022610
FILED NOVEMBER 27, 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 September 16, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth compensable quarter. The claimant contends that this determination is against the great weight and preponderance of the evidence. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

The claimant contends that he is entitled to SIBs based on having no ability to work during the qualifying period corresponding to the fifth compensable quarter. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) provides that an injured employee who has an impairment rating of 15% or greater and who has not commuted any impairment income benefits is entitled to SIBs if, during the qualifying period, the claimant has earned less than 80% of the employee's preinjury wage as a direct result of the impairment from the compensable injury and has made a good faith effort to obtain employment commensurate with the employee's ability to work. Rule 130.102(d)(4) states that the "good faith" criterion will be met 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[.]

A finding of no ability to work is a factual question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 951204, decided September 6, 1995. The claimant contends that the hearing officer abused his discretion by considering a functional capacity evaluation (FCE) that was performed approximately one month after the qualifying period corresponding to the fifth quarter had ended. The evidence reflects that the claimant did not object to the admission of the document at the hearing. We have held that medical reports that are created outside the qualifying period at issue can be considered. Texas Workers' Compensation Commission Appeal No. 961403, decided August 30, 1996 (Unpublished); Texas Workers' Compensation Commission Appeal No. 960901, decided June 20, 1996. We perceive no abuse of discretion in the hearing officer's consideration of the FCE and nothing our review of the record indicated that the hearing officer's decision is so contrary to 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).

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **STAR INSURANCE COMPANY** 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.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge