

APPEAL NO. 023026
FILED JANUARY 10, 2003

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 November 4, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 7th, 8th, 9th and 10th quarters, and that due to the late filing of the Application for SIBs (TWCC-52) for the 7th and 8th quarters, the respondent (carrier) is relieved of liability for the entire 7th quarter and is relieved of liability for the 8th quarter for the period of January 24 to March 27, 2002. The claimant appealed, and the carrier responded.

DECISION

The hearing officer's decision is affirmed.

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 SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the 7th, 8th, 9th, and 10th quarters. The claimant testified that he had no ability to work during the relevant qualifying periods. It is undisputed that the claimant did not work or look for work during the qualifying periods and that he did not participate in any vocational rehabilitation program sponsored by the Texas Rehabilitation Commission or provided by a private provider.

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.

In the instant case, the hearing officer determined that the medical reports were insufficient in that they did not specifically explain how the injury caused a total inability to work. We do not disagree with that assessment. The claimant contends that the report of the designated doctor who was appointed to determine whether his medical condition had improved sufficiently to allow him to return to work should have presumptive weight under Rule 130.110. We disagree because, as the hearing officer correctly noted, the designated doctor's report was dated after the qualifying period for the 10th quarter had ended and was not received by the Texas Workers' Compensation

Commission (Commission) until after the qualifying period for the 10th quarter had ended. Rule 130.110 provides that the presumptive weight afforded the designated doctor's report shall begin the date the report is received by the Commission. Consequently, the designated doctor's report was not entitled to presumptive weight for the quarters in issue. See Texas Workers' Compensation Commission Appeal No. 020041-s, decided February 28, 2002. While the claimant faults the Commission for not appointing a designated doctor sooner than it did, that complaint does not change the facts of the case before us and is not grounds for reversal of the hearing officer's decision. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision that the claimant is not entitled to SIBs for the 7th, 8th, 9th, and 10th quarters is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Conflicting evidence was presented on the issue of whether the carrier is relieved of liability for SIBs because of the claimant's failure to timely file a TWCC-52 for the 7th and 8th quarters. Rule 130.105 pertains to the failure to timely file a TWCC-52. Based upon the evidence before him, which included the TWCC-52s for the 7th and 8th quarters stamped as received by the carrier on March 27, 2002, the hearing officer determined that the claimant filed his TWCC-52s for the 7th and 8th quarters on March 27, 2002, which was during the 8th quarter. We conclude that the hearing officer's determinations that the carrier is relieved of liability for the 7th quarter and is relieved of liability for the 8th quarter up to March 27, 2002, are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TRANSCONTINENTAL 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.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge