

APPEAL NO. 023083  
FILED JANUARY 9, 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 begun on May 23, 2002, and continued until and concluded on July 22, 2002. By our decision in Texas Workers' Compensation Commission Appeal No. 022143, decided September 19, 2002, we reversed and remanded the case because of procedural irregularities, and directed that another hearing officer be appointed to conduct a *de novo* hearing. The hearing on remand was held on October 29, 2002, at the same location. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth quarter, and that the respondent (carrier) would be relieved of liability for SIBs from December 29, 2001, through March 4, 2002, because of the claimant's failure to timely file the Application for [SIBs] TWCC-52. The claimant appealed and the carrier responded, urging affirmance.

DECISION

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 qualifying period for the fourth quarter was from September 16 through December 15, 2001, with the fourth quarter running from December 29, 2001, through March 29, 2002. The claimant contended that he has never been released to return to full-duty work, and that he has numerous restrictions and limitations which preclude him from employment. Nevertheless, he further contended that he was participating with the Texas Rehabilitation Commission (TRC), and that he had made a good faith effort to find work commensurate with his ability to work.

The hearing officer specifically found that the claimant was not participating in a TRC-sponsored vocational rehabilitation program, noting that although there was a certificate of completion, dated October 27, 2001, from an English course taken by the claimant, there was no evidence of attendance during the qualifying period, and a concession by the claimant that he had last attended the course prior to the beginning of the qualifying period. Implicit in the hearing officer's finding is that the claimant has failed to meet the requirements of Rule 130.102(d)(2) for SIBs entitlement. As to the claimant's assertion that he had no ability to work (Rule 130.102(d)(4)), the hearing officer found that the claimant had some ability to work, which is amply supported by the evidence of record, and precludes the claimant from establishing that he is entitled to fourth quarter SIBs because of an inability to work. We note also the lack of any narrative report from any of the claimant's doctors which would explain how the compensable injury causes a total inability to work, and the existence of other records (including a functional capacity evaluation) which show that the claimant has some ability to work. Lastly, the claimant argues that he made a good faith job search, in

accordance with Rule 130.102(d)(5) and (e). The hearing officer specifically noted that the claimant failed to document weekly job searches, with no search activity documented during the first two weeks of the qualifying period. As to the second issue of timely filing the TWCC-52, the hearing officer determined that the TWCC-52 was not filed with the carrier until March 5, 2002. The above determinations are all supported by sufficient evidence.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determinations are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **BITUMINOUS CASUALTY CORPORATION** and the name and address of its registered agent for service of process is

**GLENN CAMERON  
222 WEST LAS COLINAS BOULEVARD, SUITE 1720  
IRVING, TEXAS 75016-7968.**

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Michael B. McShane  
Appeals Panel  
Manager/Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Robert W. Potts  
Appeals Judge