

APPEAL NO. 030002
FILED JANUARY 28, 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 December 6, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first and second quarters, beginning May 16 through November 13, 2002. The claimant appealed the hearing officer's SIBs determinations on sufficiency of the evidence grounds. The respondent (carrier), in a timely appeal, disputed a portion of the hearing officer's determinations on a sufficiency of the evidence basis and otherwise responded urging affirmance.

DECISION

Affirmed.

In his appeal, the claimant stated that "[t]he Statement of the Evidence set out by the hearing officer is a correct statement of the facts of the case." The facts in this case are largely undisputed. The parties stipulated that the claimant sustained a compensable injury _____, specifically a closed head injury and an injury to his left shoulder and his cervical spine. The qualifying period for the first quarter of SIBs began on February 1 and ended May 2, 2002, and the qualifying period for the second quarter of SIBs began on May 3 and ended on August 1, 2002.

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 issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the first and second quarters. Rule 130.102(d) states:

- (d) Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:
 - (1) has returned to work in a position which is relatively equal to the injured employee's ability to work;
 - (2) has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission [TRC] during the qualifying period;
 - (3) has during the qualifying period been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program provided

by a private provider that is included in the Registry of Private Providers of Vocational Rehabilitation Services;

- (4) 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...[.]

The hearing officer was not persuaded that the evidence presented by the claimant was sufficient to satisfy the requirements of Rule 130.102(d). The hearing officer specifically found that the claimant had not enrolled or participated in a program sponsored by the TRC or a private provider, and although the claimant provided a narrative report from a doctor which explained how the injury causes a total inability to work, “other, more credible records show that the claimant was able to return to work during the qualifying period for both the first (1st) and second (2nd) quarters.”

The hearing officer considered the evidence and found that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the first and second quarters of SIBs. The hearing officer concluded that the claimant is not entitled to SIBs for the first and second quarters. The hearing officer’s decision is supported by sufficient evidence and is 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 (Tex. 1986).

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

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Terri Kay Oliver
Appeals Judge