

APPEAL NO. 030034
FILED FEBRUARY 11, 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 17, 2002. The hearing officer determined that appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second quarter and that respondent (carrier) did not waive the right to contest SIBs entitlement. Claimant appealed these determinations on sufficiency grounds and also complains that the hearing officer misstated the ending date for the qualifying period. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm as reformed.

Claimant contends that the hearing officer erred in determining that the qualifying period for the second quarter ended on July 12, 2002, and contends that it ended on July 5, 2002, instead. The qualifying period ends on the 14th day before the beginning date of the quarter and consists of the 13 previous consecutive weeks. Tex. W.C. Comm'n, TEX. ADMIN. CODE § 130.101(4) (Rule 130.101(4)). The parties stipulated that the second quarter began on July 19, 2002. Therefore, the qualifying period for the second quarter ended on July 5, 2002. It appears that Finding of Fact No. 3 contains a clerical error in this regard, which the hearing officer likely made because there was evidence that the Application for [SIBs] (TWCC-52) was filed on July 12, 2002, and the dates were confused. Carrier does not specifically dispute claimant's contention in this regard. We reform Finding of Fact No. 3 and change the date therein of "July 12, 2002" to "July 5, 2002."

Claimant contends the hearing officer erred in determining that carrier did not waive the right to contest second quarter SIBs entitlement. Claimant asserts that carrier waived the right to contest second quarter SIBs because there was continuing entitlement, she was eventually paid first quarter SIBs, and carrier did not ask for a benefit review conference regarding the second quarter within 10 days. We have addressed this issue in Texas Workers' Compensation Commission Appeal No. 021078, decided June 13, 2002. Because carrier had not paid first quarter SIBs at the time claimant filed her TWCC-52 for the second quarter, Rule 130.108(d) does not apply and there was no waiver. Appeal No. 021078, *supra*. The hearing officer did not err in applying the law in this regard.

Claimant appeals Finding of Fact No. 5 to the extent that the hearing officer discounted the reports of Dr. D regarding his opinion of claimant's ability to work. The hearing officer found that Dr. D's reports do not establish that claimant had a total inability to work during the qualifying period. Dr. D stated that claimant was unable to work in any capacity during the qualifying period, that she had trouble sitting and

standing for any extended period of time, and he discussed her problems with pain and loss of range of motion. The hearing officer judged the credibility of the evidence and could determine that Dr. D did not specifically explain how the injury caused a total inability to work even a part-time, sedentary job. We note that the hearing officer found that the report of Dr. DE showed that claimant was able to perform sedentary work. We perceive no reversible error in this regard.

As reformed, we affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

JAVIER GONZALEZ
3421 WEST WILLIAM CANNON DRIVE, SUITE 131, PMB #113
AUSTIN, TX 78745.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Roy L. Warren
Appeals Judge