

APPEAL NO. 030044
FILED FEBRUARY 21, 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 11, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third, fourth, and fifth compensable quarters, and that had the claimant been entitled to 5th quarter SIBs, the respondent (carrier) is relieved of liability for part of the quarter because the claimant failed to timely file a SIBs application. The claimant appeals this decision. The carrier urges affirmance of the hearing officer's decision and order.

DECISION

Affirmed.

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 average weekly 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. The claimant asserts that he has been unable to perform any type of 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[.]

Whether the claimant provided a narrative report that complied with the requirements of Rule 130.102(d)(4) was a factual determination of the hearing officer. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. Nothing in our review of the record indicates that the hearing officer's SIBs determination is 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, 176 (Tex. 1986).

Given our affirmance of the hearing officer's determination that the claimant is not entitled to SIBs for the fifth compensable quarter, we need not address the issue of whether the carrier would otherwise be relieved of liability for part of the fifth quarter of SIBs due to the claimant not timely filing an application for payment of benefits.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **THE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DOROTHY C. LEADERER
1999 BRYAN STREET
DALLAS, TEXAS 75201.**

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Roy L. Warren
Appeals Judge