

APPEAL NO. 030057
FILED FEBRUARY 27, 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 10, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth quarter and that, had the claimant been entitled to SIBs for the fifth quarter, the respondent (carrier) would be relieved of liability for paying SIBs for the period of August 19 through September 4, 2002, because of the claimant's failure to timely file his Application for SIBs (TWCC-52) with the carrier. The claimant appeals the hearing officer's decision that he is not entitled to SIBs for the fifth quarter. No response was received from the carrier. There is no appeal of the determination regarding the late filing of the TWCC-52.

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 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 period for the fifth quarter. The hearing officer determined that during the 13 weeks of the qualifying period the claimant had some ability to perform some type of work and that he did not attempt in good faith to obtain employment commensurate with his ability to work. The claimant contends that he had no ability to work during part of the qualifying period and points out that the starting and ending dates of the qualifying period written on the TWCC-52 by the carrier are one day earlier than the starting and ending days stipulated to by the parties. We note that there is no narrative report from a doctor which specifically explains how the injury caused a total inability to work during any period of the qualifying period (See Rule 130.102(d)(4)) and that the hearing officer did not find a total inability to work for any portion of the qualifying period. In addition, the claimant did not document a job search in each week of the qualifying period whether the qualifying period stipulated to by the parties or the qualifying period stated on the TWCC-52 is used to calculate the 13 weeks in the qualifying period. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision is supported by sufficient evidence and that it 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).

We affirm the hearing officer's decision and order.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Terri Kay Oliver
Appeals Judge

Edward Vilano
Appeals Judge