

APPEAL NO. 030137
FILED FEBRUARY 20, 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 pursuant to Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 12th, 13th, 14th, and 15th quarters because he did not provide a narrative from a doctor of psychiatry that specifically explained how the claimant's injury and the impairment therefrom, including post-traumatic stress disorder and some mental depression, caused a total inability to work, and there was a record in evidence that showed he was able to return to work. The hearing officer further determined that the claimant has permanently lost entitlement to SIBs, pursuant to Section 408.146(c) because he was not entitled to SIBs for 12 consecutive months. The claimant appealed, asserting that Rule 130.102(d)(4) is invalid because it conflicts with Section 408.142, thereby making the hearing officer's decision invalid as a matter of law. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

On appeal, the claimant asserts that Rule 130.102(d)(4) is invalid because it places additional restrictions on a claimant's entitlement to SIBs that are not found in the 1989 Act. Because the 1989 Act does not define "good faith," the Texas Workers' Compensation Commission (Commission) has promulgated rules whereby good faith can be shown in a number of ways (see Rule 130.102(d) and (e)). One of those rules is Rule 130.102(d)(4), where an employee who has a total inability to work in any capacity still can show a good faith effort to seek employment commensurate with his ability. The Appeals Panel has previously held that it does not have authority to decide the validity of Commission rules. Texas Workers' Compensation Commission Appeal No. 010724, decided May 17, 2001; Texas Workers' Compensation Commission Appeal No. 022186, decided October 4, 2002. Administrative rules are presumed to be valid, that the burden of proving invalidity is on the party asserting invalidity, and that the courts are the proper forum for deciding the validity of agency rules. Texas Workers' Compensation Commission Appeal No. 980673, decided May 18, 1998.

Regarding the factual sufficiency of the hearing officer's decision, we have reviewed the complained-of determinations and find that the hearing officer's Decision and Order is supported by sufficient evidence to be affirmed. The disputed issues presented questions of fact for the hearing officer. 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). There was conflicting evidence presented on the disputed issue. 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 that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Finding no legal or factual error, we affirm the hearing officer's decision and order.

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

**JOSEPH A. YURKOVICH
1431 GREENWAY DRIVE, SUITE 450
IRVING, TEXAS 75038.**

Daniel R. Barry
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge