

APPEAL NO. 030217
FILED MARCH 18, 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 (CCH) was held on January 2, 2003. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth quarter; that the claimant permanently lost entitlement to SIBs at the end of the fourth quarter pursuant to Section 408.146(c) because he was not entitled to SIBs for twelve consecutive months; and that the claimant is not entitled to SIBs for the fifth quarter because he permanently lost entitlement to SIBs at the end of the fourth quarter. The claimant appealed the hearing officer's decision that he is not entitled to SIBs for the fourth quarter; that he permanently lost entitlement to SIBs under Section 408.146(c) at the end of the fourth quarter; and that he is not entitled to SIBs for the fifth quarter because he permanently lost entitlement to SIBs at the end of the fourth quarter. The respondent/cross-appellant (carrier) appeals the hearing officer's finding that the claimant attempted in good faith to obtain employment commensurate with his ability to work during the qualifying period for the fifth quarter. No responses were filed.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained a compensable injury; that he has a 17% impairment rating; that he has not commuted any portion of his impairment income benefits; that the qualifying period for the fourth quarter of SIBs was from January 26 through April 26, 2002; that the qualifying period for the fifth quarter of SIBs was from April 27 through July 26, 2002; and that the claimant was found not entitled to SIBs for the first, second, and third quarters.

The claimant disagrees with the hearing officer's finding that the stipulated that the claimant was found not entitled to SIBs for the first, second, and third quarters, contending that he had no ability to work during the qualifying periods for those quarters. We find no merit in that assertion because the parties stipulated on the record that the claimant was found not entitled to SIBs for the first, second, and third quarters. In addition, the hearing officer's decision and order from the prior CCH on the disputed issues of entitlement to SIBs for the first, second, and third quarters was in evidence, and it reflects that the hearing officer determined that the claimant was not entitled to SIBs for those quarters. There is no indication that the decision and order from the prior CCH was appealed to the Appeals Panel.

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 periods for the fourth and

fifth quarters. Regarding the qualifying period for the fourth quarter, the hearing officer found that the claimant had some ability to work and that the claimant did not attempt in good faith to obtain employment commensurate with his ability to work. Regarding the qualifying period for the fifth quarter, the hearing officer found that the claimant had some ability to work and that the claimant attempted in good faith to obtain employment commensurate with his ability to work. 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 findings on the claimant's ability to work and on the good faith criterion for SIBs entitlement are supported by sufficient evidence and are 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).

Since it is clear from the hearing officer's discussion in the Statement of the Evidence portion of his decision that he found that the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the fifth quarter under Rule 130.102(d)(5) by providing sufficient documentation as described in subsection (e) of that rule to show that he made a good faith effort to obtain employment, it was not necessary for the claimant to also show that he made a good faith effort under Rule 130.102(d)(2), as is contended by the carrier. See Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000, which held that a claimant only has to satisfy one of the methods for demonstrating good faith set forth in Rule 130.102(d). With regard to the carrier's assertion that the claimant is not entitled to SIBs for the fifth quarter because he did not cooperate with the Texas Rehabilitation Commission (TRC), we note that the hearing officer made no finding with regard to whether the claimant refused to cooperate with the TRC and, given the fact that the hearing officer ultimately determined that the claimant is not entitled to SIBs for the fifth quarter based on a permanent loss of entitlement to SIBs, we decline to make such a finding on appeal.

The hearing officer determined that the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c) because he was not entitled to such benefits for 12 consecutive months. See *also* Rule 130.106(a), which provides that an injured employee who is not entitled to SIBs for a period of four consecutive quarters permanently loses entitlement to such benefits. The parties stipulated that the claimant was found not entitled to SIBs for the first, second, and third quarters. Given our affirmance of the determination that the claimant is likewise not entitled to SIBs for the fourth quarter, the hearing officer properly determined that the claimant has permanently lost entitlement to SIBs under Section 408.146(c) and that he is not entitled to SIBs for the fifth quarter, because he permanently lost entitlement to SIBs at the end of the fourth SIBs quarter.

We affirm the hearing officer's decision and order.

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

**ROBERT RAMSOWER
THANKSGIVING TOWER, 1601 ELM STREET, SUITE 1600
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Elaine M. Chaney
Appeals Judge