

APPEAL NO. 030403
FILED APRIL 1, 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 January 27, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fifth quarter, a period extending from September 6 through December 5, 2002. The appellant (carrier) appealed, arguing that the determination of the hearing officer was contrary to the great weight of the evidence because the claimant failed to meet her burden of proof under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____. The qualifying period for the fifth quarter was from May 25 continuing through August 23, 2002. Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. At issue is the requirement in Section 408.142(a)(4) and Rule 130.102(b)(2) that the claimant make a good faith effort to obtain employment commensurate with her ability to work.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee as 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. The hearing officer found that the aggregate medical reports of the claimant's current treating doctor, Dr. S, explain how the injury causes a total inability to work and found that there are no other credible records showing that the claimant is able to return to work. The hearing officer explained that he did not find the record dated May 30, 2001, from Dr. C, which returned the claimant to work with restrictions, credible because it was prior to the claimant's second surgery. A report from Dr. M dated July 28, 1999, a date prior to both of the claimant's surgeries was also found not to be credible by the hearing officer. We hold the reports of Dr. S to be marginally sufficient to meet the requirements of a narrative report which specifically explains how the compensable injury causes a total inability to work in any capacity.

The hearing officer noted that the failure of the claimant to attend the required medical examination appointments and functional capacity evaluations (FCE) were all after the end of the qualifying period. The claimant testified that Dr. S told her not to take an FCE and in a record dated August 15, 2002, Dr. S noted that the claimant would

not do well with an FCE and recommended that she have one performed after the recommended surgery.

When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Applying this standard, we find insufficient grounds to reverse the challenged findings of the hearing officer.

We affirm the decision and order of the hearing officer.

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

**JIM ADAMS, ATTORNEY
450 GEARS ROAD, SUITE 500
HOUSTON, TEXAS 77067.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Terri Kay Oliver
Appeals Judge