

APPEAL NO. 030478
FILED APRIL 7, 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 30, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the first quarter, January 14 through April 14, 2002; the second quarter, April 15 through July 14, 2002; the third quarter, July 15 through October 13, 2002; and the fourth quarter, October 14, 2002, through January 12, 2003. The appellant (carrier) appealed, arguing that the determinations of the hearing officer are in error, are against the great weight and preponderance of the evidence, and are not supported by legally sufficient evidence. The carrier contended that the claimant failed to meet her burden of proof with regard to her total inability to work and that she failed to prove that she made a good faith effort to obtain employment commensurate with her ability to work. The appeal file did not contain a response from the claimant.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirements of Section 408.142(a)(4) by meeting the requirements of Rule 130.102(d)(4), and the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1). The parties stipulated that the qualifying periods for the SIBs quarters in issue were as follows: for the first quarter, October 2 through December 31, 2001; for the second quarter, January 1 through April 1, 2002; for the third quarter, April 2 through July 1, 2002; and for the fourth quarter, July 2 through September 30, 2002.

We have noted that a finding that the claimant's unemployment or underemployment is a direct result of the impairment is sufficiently supported by evidence if the injured employee sustained a serious injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996. In this instance, there is evidence from which the hearing officer could determine that the claimant's injury resulted in permanent impairment and that, as a result thereof, the claimant could no longer reasonably work as a case manager/nurse.

The carrier argues at length in its request for review that the claimant failed to show a good faith effort to find employment during the four quarters of SIBs at issue, noting that the claimant made no job searches during the first two qualifying periods and during the third and fourth qualifying periods, the claimant made "only a perfunctory effort to list numerous job contacts while sabotaging any possibility of actually obtaining

employment.” The hearing officer’s determination of the claimant’s entitlement to SIBs was based on the finding that the claimant was unable to perform any type of work in any capacity, provided narrative reports explaining how the injuries cause a total inability to work, and no other records show the claimant is able to return to work. We note that compliance with only one subsection of Rule 130.102(d) will establish good faith. See Texas Workers’ Compensation Commission Appeal No. 001099, decided June 21, 2000.

The carrier argues that the claimant testified at the CCH that she was capable of performing numerous actions which would enable her to be employed in a sedentary capacity, noting the tasks required of her job search in the third and fourth quarters and the videotape which showed the claimant exiting a motor vehicle without the assistance of any support device. The carrier additionally noted that the claimant drove herself to the CCH. The hearing officer noted that the surveillance tape was not sufficient evidence to overcome the opinions of the two carrier doctors that the claimant was totally disabled and not able to return 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 claimant provided narrative reports, including reports from the carrier’s doctor, explaining how the injuries caused a total inability to work and no other records show claimant is able to return to work.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). 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); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no 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 **HARTFORD CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge