

APPEAL NO. 030500
FILED MARCH 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 (CCH) was held on February 6, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the ninth quarter. The claimant appealed and the respondent (carrier) responded.

DECISION

Affirmed.

The claimant was represented by attorney (attorney 1) at the CCH, and attorney 1 filed a request for appeal on behalf of the claimant. Attorney (attorney 2), who did not represent the claimant at the CCH, also filed a request for appeal on behalf of the claimant. There is a Dispute Resolution Information System (DRIS) note in the appeal file. According to the DRIS note, on February 14, 2003, a Texas Workers' Compensation Commission employee received a letter, apparently from the claimant, in which the claimant released (attorney 3), who is an attorney in attorney 1's law firm, as his attorney and "this also includes [attorney 1's law firm]." The DRIS note goes on to state that the claimant wants to appeal the decision and order on ninth quarter SIBs. Since the appeal file does not contain any such letter from the claimant regarding the release of one or more attorneys, and since we are uncertain of what has actually transpired, given that both attorney 1 and attorney 2 filed timely requests for appeal on behalf of the claimant, both of which indicated that they were served on the carrier, we will, for purposes of this appeal, consider both requests for appeal.

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 ninth quarter. Conflicting evidence was presented with regard to whether the claimant actually made all of the employment contacts listed on his Application for [SIBs] (TWCC-52) for the ninth quarter. The hearing officer apparently was not persuaded that the claimant had made some of the contacts. The claimant was given the opportunity to cross-examine the carrier's witness. The hearing officer found that during the qualifying period for the ninth quarter, the claimant did not make a good faith effort to obtain employment commensurate with his ability to work and concluded that the claimant is not entitled to SIBs for the ninth quarter. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge