

APPEAL NO. 030638
FILED APRIL 30, 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 February 21, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appeals this decision. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to first quarter SIBs. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) establish the requirements for entitlement to SIBs. At issue was whether the claimant satisfied the requirements of Rule 130.102(d)(4), which states that the "good faith" criterion will be met if the employee:

has 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 determined that the claimant did not provide a narrative specifically explaining how the injury causes a total inability to work and that a medical report in evidence showed that the claimant is able to work in a light-duty capacity. The claimant asserts that the hearing officer failed to consider the report of his treating doctor, Dr. A, which the claimant alleges satisfies the narrative requirements of Rule 130.102(d)(4). While the hearing officer specifically refers to the reports of Dr. B only as being insufficient to constitute narratives, there is no indication that the hearing officer disregarded the report of Dr. A or that she erred in determining that the evidence, including Dr. A's report, did not contain a narrative.

The claimant additionally asserts that the hearing officer was precluded from finding that the functional capacity evaluation (FCE) constituted a medical report indicating that the claimant was able to work in a light-duty capacity. In support of his position, the claimant cites Texas Workers' Compensation Commission Appeal No. 000819, decided June 1, 2000. In that case, the Appeals Panel stated that the "mere existence of a medical report stating the claimant had an ability to work alone does not mandate that a hearing officer find that other records showed an ability to work." However, that case does not stand for the proposition that an FCE cannot be considered a record showing an ability to work. Whether the claimant established SIBs entitlement on a no ability to work theory was a factual question for the hearing officer to resolve. 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). In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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

**RON JOHNSON
101 EAST PARK BOULEVARD, SUITE 200
PLANO, TEXAS 75074.**

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Roy L. Warren
Appeals Judge