APPEAL NO. 030662
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 13, 2003, with the record being left open until February 18, 2003. The hearing officer decided that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 12th, 13th or 14th quarters. The claimant appeals those determinations. There is no response from the respondent (self-insured) in our file.

DECISION

Affirmed.

Initially we note that this case involves the interpretation and application of Section 408.151 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.110 (Rule 130.110)). Section 408.151(b) provides:

> If a dispute exists as to whether the employee's medical condition has improved sufficiently to allow the employee to return to work, the [Texas Workers' Compensation Commission (Commission)] shall direct the employee to be examined by a designated doctor chosen by the commission. The designated doctor shall report to the commission. The report of the designated doctor has presumptive weight, and the commission shall base its determination of whether the employee's medical condition has improved sufficiently to allow the employee to return to work on that report unless the great weight of the other medical evidence is to the contrary.

In addition, Rule 130.110(a) provides, in pertinent part, as follows:

> The report of the designated doctor shall have presumptive weight unless the great weight of the other medical evidence is to the contrary. The presumptive weight afforded the designated doctor's report shall begin the date the report is received by the commission and shall continue: (1) until proven otherwise by the great weight of the other medical evidence; or (2) until the designated doctor amends his/her report based on newly provided medical or physical evidence.

A designated doctor was appointed in this case pursuant to Section 408.151 and he issued his opinion on August 13, 2002, that the claimant could not work. Pursuant to Rule 130.110, the designated doctor's report is afforded presumptive weight from the time that the Commission receives the report. Although the report is dated August 13, 2002, there is no evidence of when, or even if, the Commission received that report during the qualifying periods. Although a date stamp of September 23, 2002, shows

that the self-insured received the report on that date, there was no evidence offered as to when the report was received by the Commission. Consequently, the report is not entitled to presumptive weight. Texas Workers' Compensation Commission Appeal No. 022604-s, decided November 25, 2002.

Where the designated doctor's Rule 130.110 report cannot be given presumptive weight, we have previously determined that a Rule 130.102(d)(4) analysis would be appropriate to determine whether a claimant is entitled to SIBs. *See* Texas Workers' Compensation Commission Appeal No. 021439, decided July 24, 2002. Rule 130.102 provides the regulatory requirements for entitlement to SIBs. Rule 130.102(d)(4) provides that the statutory good faith requirement may be met if the employee:

> (4) 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 there were other records showing that the injured employee is able to return to work. In cases where a total inability to work is asserted and there are other records which appear to show an ability to work, the hearing officer is not at liberty to simply reject those records as not credible without explanation or support in the record. Texas Workers' Compensation Commission Appeal No. 020041-s, decided February 28, 2002. However, "[t]he 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. The hearing officer still may look at the evidence and determine that it failed to show this." Texas Workers' Compensation Commission Appeal No. 000302, decided March 27, 2000. The hearing officer explained why he found the other records credible.

In view of the evidence presented, we cannot conclude that the hearing officer's determinations are 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).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**MANAGER**
**(ADDRESS)**
**(CITY), TEXAS (ZIP CODE)**.

_____
Roy L. Warren
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

CONCUR IN THE RESULT:

I concur in the result because there is evidence that the Commission had the designated doctor's September 2002 report in December 2002. I disagree that there is no evidence when the Commission received it. However, I agree with the bottom line in this case.

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Judy L. S. Barnes
Appeals Judge