

APPEAL NO. 030791  
FILED MAY 22, 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 25, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter. The appellant (carrier) appealed, contending that the hearing officer's decision is not supported by the evidence. The claimant responded, urging affirmance.

DECISION

Affirmed.

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. The claimant contended that he had no ability to work. It is undisputed that he did not work or look for work during the qualifying period. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with his ability to work 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 found that the claimant had no ability to work during the qualifying period and that he made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period. The hearing officer concluded that the claimant is entitled to SIBs for the first quarter. In Texas Workers' Compensation Commission Appeal No. 960880, decided June 18, 1996, the Appeals Panel stated that "medical evidence from the filing periods is clearly relevant but other medical evidence from outside the periods, especially that which is relatively close to the filing periods, may be relevant to the condition of the claimant during those periods." In Texas Workers' Compensation Commission Appeal No. 001055, decided June 28, 2000, the Appeals Panel noted that medical evidence from outside the qualifying period may be considered insofar as the hearing officer finds it probative of conditions in the qualifying period. Whether there was a narrative report in evidence that specifically explained how the injury caused a total inability to work during the qualifying period presented a fact question for the hearing officer to resolve from the evidence presented. Whether other records showed an ability to work also presented a fact question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 000625, decided May 11, 2000.

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 that the claimant is entitled to SIBs for the first quarter is supported by sufficient evidence and 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 **SAFECO INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**LEON CROCKETT  
1600 NORTH COLLINS BLVD, SUITE 300  
RICHARDSON, TEXAS 75080.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Edward Vilano  
Appeals Judge