

APPEAL NO. 030858
FILED MAY 29, 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 March 31, 2003. With respect to the issue before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter. In his appeal, the claimant essentially argues that the hearing officer's determinations that he had some ability to work in the relevant qualifying period and that he is not entitled to SIBs for the first quarter are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not satisfy the good faith requirement of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) by demonstrating that he had no ability to work in the qualifying period for the first quarter of SIBs. The hearing officer was not persuaded that the evidence presented by the claimant was sufficient to satisfy the requirements of Rule 130.102(d)(4); thus, he further determined that the claimant did not prove that he had no ability to work during the qualifying period for the first quarter. Nothing in our review of the record reveals that the challenged determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb the good faith determination, or the determination that the claimant is not entitled to SIBs for the first quarter, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In his appeal, the claimant also asserts that the hearing officer improperly refused "to include his constitutional challenge" to Rule 130.102(d)(4). We note that at the beginning of the hearing on this matter, the claimant made an oral motion to include an issue challenging the constitutionality of Rule 130.102(d)(4). Counsel for the claimant conceded that he did not file a written request to add the issue, and, as a result, we perceive no error on the part of the hearing officer in denying the claimant's request. In addition, we have held that the Appeals Panel does not have the authority to decide the validity of Texas Workers' Compensation Commission rules. See Texas Workers' Compensation Commission Appeal No. 030137, decided February 20, 2003; Texas Workers' Compensation Commission Appeal No. 022186, decided October 4, 2002.

The hearing officer's decision and order are affirmed.

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

**STEVE ROPER
1616 SOUTH CHESTNUT STREET
LUFKIN, TEXAS 75901.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge