

APPEAL NO. 030920
FILED MAY 28, 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 25, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) was entitled to supplemental income benefits (SIBs) for the first quarter, May 8 through August 6, 2001; the second quarter, August 7 through November 5, 2001; the third quarter, November 6, 2001, through February 14, 2002; and the fourth quarter, February 5 through May 6, 2002. The hearing officer determined that the claimant was not entitled to SIBs for the fifth quarter, May 7 through August 5, 2002; the sixth quarter, August 6 through November 4, 2002; or the seventh quarter, November 5, 2002, through February 3, 2003. The claimant appealed the determinations of non-entitlement, arguing that the evidence supported his total inability to work during the qualifying periods at issue. The respondent (carrier) responded, urging affirmance. The determinations of SIBs entitlement for the first, second, third, and fourth quarters were not appealed and have become final. See Section 410.169.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirements of Section 408.142(a)(4) by meeting the requirements of Rule 130.102(d)(4). The qualifying periods for the SIBs quarters in issue were as follows: for the fifth quarter, January 23 through April 23, 2002; for the sixth quarter, April 24 through July 23, 2002; and for the seventh quarter, July 24 through October 22, 2002.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee as 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 during each of the fifth through the seventh qualifying periods the claimant had some limited ability to work, and did not provide a narrative report showing how the impairment from the compensable injury prevented him from performing any type of work.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo

1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the challenged findings of the hearing officer.

We affirm the decision and order of the hearing officer.

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

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge