

APPEAL NO. 030959
FILED JUNE 11, 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 27, 2003. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant) impairment rating (IR) is 22%, and that the claimant is entitled to supplemental income benefits (SIBs) for the first quarter, November 21, 2002, through February 19, 2003. The appellant (carrier) appealed on grounds of factual sufficiency and argues that the claimant failed to make a good faith effort to seek employment commensurate with his ability to work. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant attained maximum medical improvement on August 15, 2001, as determined by the designated doctor. It was undisputed that the claimant sustained a compensable injury on _____. Section 408.125(e) of the 1989 Act provide that a report of a Texas Workers' Compensation Commission (Commission)-appointed designated doctor shall have presumptive weight on the issue of IR and the Commission shall base its determination on such report unless the great weight of other medical evidence is to the contrary. The Appeals Panel has stated that the great weight of the other medical evidence requires more than a mere balancing or preponderance of the evidence; that no other doctor's report, including a treating doctor's report, is accorded the special presumptive status; that the designated doctor's report should not be rejected absent a substantial basis for doing so; and that medical evidence, not lay testimony, is required to overcome the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 960817, decided June 6, 1996; and Texas Workers' Compensation Commission Appeal No. 94835, decided August 12, 1994.

The hearing officer determined that the other medical evidence did not constitute "the great weight of other medical evidence" contrary to the designated doctor's report in which he assigned the claimant an IR of 22%. Upon review of the record in this matter, we cannot say that the hearing officer erred in this determination. As such, the hearing officer did not err in giving presumptive weight to the designated doctor's report in accordance with Section 408.125(e).

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 rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rule 130.102(d)(2). It was undisputed that the

qualifying period for the first quarter began on August 9 and ended on November 7, 2002.

The carrier argues that the claimant failed to meet the good faith requirement for SIBs eligibility because he could not show persuasive evidence of the dates he was enrolled in a program sponsored by the Texas Rehabilitation Commission (TRC). The hearing officer specifically found that the claimant provided documentation regarding the qualifying period that shows he was enrolled in and satisfactorily participating in a full time vocational rehabilitation program sponsored by the TRC. There is sufficient evidence in the record to support this finding. As stated in Texas Workers' Compensation Commission Appeal No. 001536, decided August 9, 2000, attendance in a TRC-sponsored program as described in the rule is not required in every week of the qualifying period, but only "during" that period. 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 is supported by sufficient evidence and that it 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 decision and order of the hearing officer.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge