

APPEAL NO. 031129
FILED JUNE 6, 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 April 1, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter, January 3 through April 3, 2003. The claimant appealed, arguing that the determination of the hearing officer is against the great weight and preponderance of the evidence. The respondent (carrier) 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 issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the first quarter. The claimant contends that he had no ability to work during the qualifying period in dispute, September 19 through December 20, 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 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. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

The hearing officer considered the evidence and found that the claimant had an ability to work during the relevant qualifying periods and that he did not attempt, in good faith, to obtain employment commensurate with his ability to work during the qualifying period at issue. The hearing officer determined that the claimant failed to provide a narrative report from a doctor that specifically explains how the injury caused a total inability to work and that there was another record that shows the claimant had an ability to work during the relevant qualifying period. The evidence reflects that the claimant did not look for work during the qualifying period for the first quarter. 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 **NATIONAL AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DAVID W. MCLANE
1601 ELM STREET, SUITE 3000
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge