APPEAL NO. 031167
FILED JUNE 26, 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 14, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first and second compensable quarters. The appellant (carrier) appeals this decision. The appeal file does not contain a response from the claimant.

DECISION

Affirmed

Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

> An employee is entitled to [SIBs] if on the expiration of the impairment income benefit [IIBs] period computed under Section 408.121(a)(1) the employee:
>
> (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;
>
> (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
>
> (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
>
> (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), applicable in this case, states that the good faith criterion will be met 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[.]

In the present case, the hearing officer determined that the combination of two separate letters, which were written by the same doctor, constituted a narrative within the meaning of Rule 130.102(d)(4); that no other record showed that the claimant had an ability to work during the qualifying periods in question; and that the claimant is

entitled to SIBs for the first and second quarters. The carrier argues that the SIBs entitlement determination should be reversed because the hearing officer was not at liberty to combine the two reports from the same doctor in order to establish a narrative, and because the reports were created subsequent to the expiration of the second quarter qualifying period. We are not persuaded by either of these arguments. The Appeals Panel has previously stated that a hearing officer may consider one doctor's reports and narrative together to determine whether there is an adequate narrative for the purposes of Rule 130.102(d)(4). Texas Workers' Compensation Commission Appeal No. 011152, decided on July 16, 2001. That being the case, we perceive no error in the hearing officer's consideration of the two narratives in determining that the claimant satisfied the requirements of Rule 130.102(d)(4).

The narratives in question were created on January 9 and February 10, 2003. The qualifying periods corresponding to the first and second compensable quarters were from July 6 through October 4, 2002, and from October 5, 2002, through January 3, 2003, respectively. We have repeatedly held that medical evidence created outside of the qualifying period, especially that which is relatively close to the qualifying period, may be relevant in a case concerning no ability to work. Texas Workers' Compensation Commission Appeal No. 991298, decided July 29, 1999; Texas Workers' Compensation Commission Appeal No. 992462, decided December 20, 1999. For this reason, we do not agree that the reports in question could not constitute a narrative.

A finding of no ability to work is a factual determination for the hearing officer. 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 from the evidence presented. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer is affirmed.

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

LEO MALO
ZURICH NORTH AMERICAN
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.

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Chris Cowan
Appeals Judge

CONCUR:

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Veronica Lopez-Ruberto
Appeals Judge

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Margaret L. Turner
Appeals Judge