

APPEAL NO. 031284  
FILED JULY 2, 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 (CCH) was held on April 23, 2003. The hearing officer determined that the respondent (claimant herein) is entitled to supplemental income benefits (SIBs) for the fourth quarter. The appellant (self-insured herein) files a request for review, contending that the claimant had not made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the fourth quarter. There is no response from the claimant contained in our file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

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) through a total inability to work as set out in Rule 130.102(d)(4). 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 from a doctor which specifically explains how the injury caused 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 the qualifying period of the fourth quarter the claimant had no ability to work, that there was a narrative report from Dr. D which specifically explains how the injury caused a total inability of the claimant to work, and that there is no other record which shows that the claimant is able to work.

Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given 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, 702 (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, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619,

620 (Tex. App.-El Paso 1991, writ denied). 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 overwhelming weight 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 Co., 715 S.W.2d 629, 635 (Tex. 1986).

In her decision, the hearing officer gives an explanation as to why she did not believe that Dr. Y report of May 2, 2001, showed that the claimant had an ability to work. Applying the standard of review above, we do not find either the factual findings or the decision of the hearing officer to be contrary to the overwhelming evidence.

We affirm the decision and order of the hearing officer

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Veronica Lopez-Ruberto  
Appeals Judge