APPEAL NO. 031304
FILED JUNE 27, 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 18, 2003. The hearing officer determined that the claimant is not entitled to supplemental income benefits (SIBs) for the sixth compensable quarter. The claimant appeals this determination. The respondent (carrier) contends that the claimant's appeal was not timely filed and should not be given consideration. Alternatively, the carrier urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Records of the Texas Workers' Compensation Commission (Commission) reflect that the hearing officer's decision was mailed to the claimant on April 28, 2003. Pursuant to Section 410.202(a), for an appeal to be considered timely, it must be filed or mailed within 15 days, excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code, of the date of receipt of the hearing officer's decision. Applying Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)) and Section 410.202, the claimant was deemed to have received the hearing officer's decision on May 3, 2003, and the deadline for the claimant to file an appeal was May 23, 2003. The envelope containing the claimant's appeal reflects that it was mailed on May 20, 2003, and the Commission received the request for review on May 23, 2003. Therefore, the claimant's appeal was timely filed.

The claimant contends that all of the evidence was not discussed in the Statement of the Evidence portion of the hearing officer's decision. A hearing officer is not required to recite the facts since the 1989 Act only requires findings of fact, conclusions of law, whether benefits are due, and an award of benefits due. Texas Workers' Compensation Commission Appeal No. 93791, decided October 18, 1993. A statement of evidence, if made, only needs to reasonably reflect the record. Each area that the hearing officer addressed in the Statement of the Evidence is supported in the record. The Statement of the Evidence reasonably reflects the evidence of record in this case.

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 raring [IR] 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.

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[.]

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. The hearing officer found that the claimant did not provide the required narrative and that there were other records in evidence showing that the claimant had an ability to work. 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 claimant disputes Finding of Fact No. 1 E, which states that the "Claimant reached maximum medical improvement on August 25, 1998, with at least a 15% [IR]". The claimant stipulated to this finding at the hearing and, as such, he is bound by his agreement. We note that the disputed finding of fact simply lays a predicate for SIBs eligibility, but does not define the claimant's exact IR.

The claimant argues that Carrier's Exhibit No. 6, a record dated December 5, 2002, purportedly showing an ability to work, was created outside the qualifying period, which ended on October 16, 2002. The Appeals Panel has stated that while it is desirable to have the medical reports be as close to the qualifying periods as possible, medical reports outside the qualifying period at issue can be considered. Texas Workers' Compensation Commission Appeal No. 000096, decided February 29, 2000. The claimant further contends that the medical records, which show an ability to work, are not work status reports. There is no requirement that "other records" be limited to the form of work status reports. We additionally note that the hearing officer found, and we have affirmed, that the claimant did not provide a narrative establishing that he had no ability to work during the qualifying period in question. Consequently, the claimant's complaints with regard to the "other records" have no effect on the SIBs determination.

The claimant contends that he was involved in a Texas Rehabilitation Commission (TRC) program during the qualifying period in question. Rule 130.102(d)(2) provides that the good faith criterion for SIBs eligibility may be satisfied if the claimant "has been enrolled in and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the [TRC] during the qualifying period." However, in the present case, the claimant neither asserted this theory of SIBs eligibility at the hearing, nor presented evidence establishing that he met the requirements of Rule 130.102(d)(2).

The claimant complains about the assistance that he received from the ombudsman. The record reflects that the claimant was aware of his right to obtain legal counsel and that he agreed to the scope of the ombudsman's assistance. We generally do not review whether an ombudsman satisfactorily assisted an employee and, therefore, we dismiss the claimant's complaint regarding such assistance. With regard to the claimant's complaint that a narrative "was never requested by the Commission," we note that the ombudsman did, in fact, request a narrative report on behalf of the claimant.

The decision and order of the hearing officer are affirmed.

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

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Chris Cowan
Appeals Judge

CONCUR:

_____
Veronica Lopez-Ruberto
Appeals Judge

_____
Margaret L. Turner
Appeals Judge