

APPEAL NO. 031326
FILED JULY 8, 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 May 7, 2003. The hearing officer determined that (1) the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth quarter; and (2) the respondent (carrier) did not waive its right to contest the claimant's entitlement to fifth quarter SIBs. The appellant appeals these issues on sufficiency of the evidence grounds. The carrier urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in making the complained-of determinations. At issue was whether the claimant was entitled to fifth quarter SIBs under a "no ability to work" theory (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) and whether the carrier disputed entitlement to fifth quarter SIBs by requesting a benefit review conference within 10 days after receiving the claimant's SIBs application (Rule 130.108(d)). The claimant had the burden of proof on these issues. See Texas Workers Compensation Commission Appeal No. 021078, decided June 13, 2002. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determinations are 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 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Veronica Lopez-Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge