

APPEAL NO. 031435
FILED JULY 23, 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 28, 2003. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first and second quarters.

The claimant appealed, contending that she has met the criteria of the 1989 Act and Texas Workers' Compensation Commission (Commission) rules for entitlement to SIBs based on a total inability to work. The appeal file does not contain a response from the respondent (carrier).

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 parties stipulated that the claimant sustained a compensable injury on _____; that the claimant has an impairment rating of 15% or more; that impairment income benefits have not been commuted; and that the applicable qualifying periods are from April 5 through July 4, 2002, for the first quarter, and July 5 through October 3, 2002, for the second quarter. The hearing officer's determination that the claimant's unemployment was a direct result of the compensable impairment has not been appealed. At issue is whether the claimant met the good faith attempt to obtain employment requirement of Section 408.142(a)(4) and Rule 130.102(b)(2). The claimant contends that she has a total inability to work in any capacity.

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. The hearing officer determined that while the claimant was unable to perform any type of work in any capacity during the relevant qualifying periods, the claimant had not provided a narrative report from a doctor that specifically explained how the injury caused a total inability to work. The hearing officer, in her Statement of the Evidence, discussed the reports of various doctors. The claimant contends that the reports from Dr. M, the claimant's treating chiropractor, do specifically explain how the compensable injury causes a total inability to work. The claimant did not change treating doctors to Dr. M until after the qualifying periods, and in a report dated December 4, 2002, Dr. M notes "some symptom magnification," that "it would be very different for her to do any work" and that "[a]ny work she does will certainly have to be sedentary." Although not mentioned in the hearing officer's determinations, we note that in evidence is a report

dated February 19, 2003, from a Commission-appointed independent medical examination doctor who states that the claimant “could return to work at this time, but only within certain work restrictions as delineated on the Work Status Report (TWCC-73) form.”

We have reviewed the complained-of determinations and conclude that the hearing officer’s determinations are not 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).

Accordingly, the hearing officer’s decision and order are affirmed.

The true corporate name of the insurance carrier is **SOUTH PLAINS SCHOOL WC PROGRAM** and the name and address of its registered agent for service of process is

**JERRY EDWARDS
101 HWY 281, SUITE 304
MARBLE FALLS, TEXAS 78654.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica Lopez-Ruberto
Appeals Judge

Edward Vilano
Appeals Judge