

APPEAL NO. 031487
FILED JULY 21, 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 March 4 and May 19, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second and third quarters and that the claimant had good cause for failing to attend the March 4, 2003, scheduled CCH. The claimant appeals the adverse SIBs determinations. The response in the appeals file from the respondent (carrier) is date-stamped as received on July 14, 2003. This is well past the date that it needed to be received in order to be timely. We may not consider the carrier's response.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury; that he has reached maximum medical improvement with an impairment rating of 15% or greater; that he has not commuted any portion of his impairment income benefits; that the qualifying period for the second quarter of SIBs was from September 1 through November 30, 2002; and that the qualifying period for the third quarter of SIBs was from December 1, 2002, through March 1, 2003.

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). 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 claimant contended that he had no ability to work during the qualifying periods for the second and third quarters, asserting that he is unable to work, that his doctors and the carrier's required medical examination (RME) doctor say that he cannot work, that he has a lot of pain, that he is on several pain-killing medications. The carrier argued that the report of the RME doctor and a functional capacity evaluation both indicate that the claimant has some ability to work. The hearing officer was not convinced that the evidence submitted by the claimant was sufficient to satisfy the requirements of Rule 130.102(d)(4) to establish good faith based upon a total inability to work. The hearing officer determined that the claimant had some ability to work and that he had not made a good faith effort to secure employment commensurate with his abilities.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508

S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). We are satisfied that the challenged SIBs determinations of the hearing officer 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

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

**THE CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge