

APPEAL NO. 031543  
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 was held on May 13, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first and second compensable quarters. The claimant appeals these determinations. The respondent (carrier) argues that the claimant's appeal was not timely filed and, therefore, 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 May 21, 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 26, 2003, and the deadline for the claimant to file an appeal was June 16, 2003. A facsimile of the claimant's appeal was received by the Commission on June 16, 2003, and, therefore, it was timely filed.

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 rating 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 decision and order of the hearing officer are affirmed.

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

**CT CORP SYSTEMS  
350 NORTH ST. PAUL  
DALLAS, TEXAS 75201.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Veronica Lopez-Ruberto  
Appeals Judge

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Edward Vilano  
Appeals Judge