

APPEAL NO. 031620
FILED JULY 30, 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 12, 2003. The hearing officer determined that the claimant is not entitled to supplemental income benefits (SIBs) for the fifth through tenth compensable quarters. The claimant appeals these determinations. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

We initially address the carrier's complaint on appeal that the claimant's statements in his request for review relating to his physical limitations, medical treatment, and the accuracy of Dr. F report should not be considered. The record reflects that these arguments were espoused by the claimant at the hearing. As such, we cannot agree with the carrier's assertion that the claimant's arguments on appeal constitute new evidence.

Section 408.142 provides that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has returned to work earning less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with the employee's ability to work. Rule 130.102(d)(4), applicable in this case for the fifth through eighth quarters, 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. With regard to the qualifying periods corresponding to the fifth through eighth SIBs quarters, the hearing officer found that the claimant did not provide the required narrative report from a doctor which specifically explains how the injury causes a total inability to work and that there were other records in evidence showing that the claimant had an ability to work. Because the claimant did not satisfy the good faith requirement for SIBs entitlement for four consecutive quarters, the hearing officer further found that the claimant permanently lost eligibility to SIBs entitlement pursuant to

Section 408.146(c) and Rule 130.106. 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).

With regard to the claimant's complaint on appeal relating to his former attorney's failure to file SIBs applications on his behalf, we note that the Appeals Panel does not have jurisdiction to address such contention, as it is essentially a matter between the claimant and his representative. Texas Workers' Compensation Commission Appeal No. 94030, decided February 15, 1994.

The decision and order of the hearing officer are affirmed.

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

**JEFF AUTREY
ROAN & AUTREY
400 WEST 15TH STREET
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge