

APPEAL NO. 031661  
FILED AUGUST 13, 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 record closed on May 27, 2003. With respect to the issues before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first through eighth quarters. In its appeal, the appellant (carrier) argues that the hearing officer erred in determining that the claimant satisfied the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) and that she is entitled to SIBs for the first through eighth quarters. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

Initially, we note that the carrier filed an amended request for review with the Texas Workers' Compensation Commission (Commission). In that document the carrier noted that pursuant to Rule 102.5(d), it was deemed to have received the hearing officer's decision on June 4, 2003, the day after it was placed in the carrier's (City 1) representative's box. However, Commission records reflect that the carrier's (City 1) representative signed for the hearing officer's decision on June 3, 2003. We have previously held that a deemed date of receipt does not control over an earlier, signed acknowledgment of receipt. Texas Workers' Compensation Commission Appeal No. 022685, decided December 9, 2002; Texas Workers' Compensation Commission Appeal No. 012044, decided October 16, 2001. Thus, in accordance with Section 410.202(d), which was amended June 17, 2001 to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of the 15-day appeal period, the last day for the carrier to file a timely appeal was June 25, 2002. The amended appeal is date-stamped as having been received by the Commission on June 26, 2002, and thus, it is untimely. Because the initial request for review, which was received on June 24, 2002, was the only timely appeal, it is the only pleading we will consider.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that she was assigned a 30% impairment rating for her compensable injury; that she did not elect to commute her impairment income benefits; that the first eight quarters of SIBs comprised the period from June 21, 2001, to June 18, 2003; and that the qualifying period for the first quarter of SIBs ran from March 9 to June 7, 2001, and that the subsequent 13-week periods were the qualifying periods for the other quarters of SIBs at issue. The hearing officer determined that the claimant had no ability to work in the qualifying periods for the first through eighth quarters of SIBs and that the claimant presented a medical narrative that specifically explained how the claimant's injury caused an inability to work in any capacity during the qualifying periods

and that no other records show that the claimant had the ability to work in the relevant qualifying periods. Thus, he further determined that the claimant had satisfied the requirements of Rule 130.102(d)(4) and that she is entitled to SIBs for the first through eighth quarters.

The hearing officer did not err in determining that the claimant satisfied the good faith requirement of Rule 130.102(d)(4) by demonstrating that she had no ability to work in the qualifying period for the first quarter of SIBs. The hearing officer determined that the April 1, 2003, report from Dr. S, the claimant's treating doctor, was sufficient to satisfy the narrative requirement. In addition, the hearing officer determined that the January 28, 2003, report from Dr. L, the doctor who examined the claimant at the request of the carrier, could also serve as a narrative that specifically explains how the compensable injury causes a total inability to work. Our review of the record demonstrates that the hearing officer's interpretation of those reports is a reasonable interpretation and nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, we will not disturb the hearing officer's determination that the claimant satisfied the narrative requirement of Rule 130.102(d)(4) on appeal. The carrier also argues that other records show that the claimant had some ability to work. The hearing officer determined that the other records were not persuasive and he was acting within his province as the fact finder in so finding. We cannot agree that the hearing officer's determination that no other records show an ability to work is so against the great weight of the evidence as to compel its reversal on appeal. The hearing officer was persuaded that the evidence presented by the claimant was sufficient to satisfy the requirements of Rule 130.102(d)(4) and to sustain her burden of proving entitlement to SIBs for the first through eighth quarters. Nothing in our review of the record reveals that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb the hearing officer's good faith determinations, or the determinations that the claimant is entitled to SIBs for the first through eighth quarters, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Finally, we briefly consider the carrier's assertion that the hearing officer erred in holding the record open and in admitting a May 21, 2003, letter from Dr. S. The claimant had wanted to call Dr. S to testify at the hearing; however, he was unavailable and the hearing officer agreed to hold the record open for a "statement" from Dr. S. The carrier's attorney initially objected to holding the record open and then stated that he would "reserve my objection to the admissibility of whatever that statement is until after I see the statement." The record reflects that the hearing officer faxed a copy of Dr. S's letter to the carrier's attorney on May 22, 2003, and listed Tuesday, May 27, 2003, at 5:00 p.m. as the "deadline for each party to submit written objection and/or comments regarding the statement." On May 30, 2003, the carrier's attorney sent an e-mail to the hearing officer, stating "[d]ue to a very hectic travel schedule and a new legal assistant, I have only just seen the statement from [Dr. S]." In his e-mail, the carrier's attorney renewed his objection to the admission of the statement. Assuming, without deciding, that the May 30, 2003, e-mail was sufficient to preserve the carrier's objection to Dr. S's

May 21, 2003, letter, we must consider whether the admission of that letter would rise to the level of reversible error. Initially, we note that the information in Dr. S's May 21, 2003, letter is cumulative of other evidence properly before the hearing officer and, as such, it cannot be said that the whole case turns on the particular evidence admitted or excluded. Atlantic Mut. Ins. Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). That is, the hearing officer's admission of the challenged exhibits, if error, was not reversible error because any consideration of that exhibit "was not reasonably calculated to cause and probably did not cause the rendition of an improper judgment." Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The hearing officer's decision and order are affirmed.

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

**CT CORPORATION SYSTEM  
35 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Veronica Lopez-Ruberto  
Appeals Judge