

APPEAL NO. 031692
FILED AUGUST 6, 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 28, 2003. The hearing officer determined that the appellant (claimant) was entitled to supplemental income benefits (SIBs) for the sixth quarter, but was not entitled to seventh quarter SIBs. The claimant appeals the hearing officer's determination with regard to seventh quarter SIBs on sufficiency of the evidence grounds and asserts that the hearing officer erred in admitting Carrier's Exhibit Nos. 1 and 2. The carrier urges affirmance. The hearing officer's determination with regard to sixth quarter SIBs was not appealed and is, therefore, final. Section 410.169.

DECISION

Affirmed.

We first address the claimant's assertion that the hearing officer erred by admitting Carrier's Exhibit Nos. 1 and 2. Carrier's Exhibit No. 1 is a report from a designated doctor regarding the claimant's ability to work, and Carrier's Exhibit No. 2 is a functional capacity evaluation report ordered by the designated doctor. The claimant objected to the admission of these documents on the basis that the designated doctor was appointed prematurely. The claimant's objection goes to the weight to be given to the evidence and is not, itself, a basis for reversing the hearing officer's decision. Additionally, we note that the parties agreed that the designated doctor's report was not entitled to presumptive weight, and the record shows that the hearing officer did not give presumptive weight to the reports. We further note that the claimant concedes, in his appeal, that he "had a total inability to work from February 26, 2003, until he received the results of the examination by [the designated doctor]." Accordingly, we perceive no error.

The hearing officer did not err in determining that the claimant is not entitled to seventh quarter SIBs. The seventh quarter qualifying period began February 26, 2003, and continued through May 27, 2003. The hearing officer found that the claimant had no ability to work from February 26 through April 8, 2003. At issue is whether the claimant made a good faith job search commensurate with his ability to work from April 9 through May 27, 2003, pursuant to Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(5) and (e) (Rule 130.102(d)(5) and (e)). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer considered the evidence and found that the claimant did not make a good faith effort to obtain employment. Contrary to the claimant's assertion, we do not believe that the hearing officer applied an improper standard in stating "he would benefit by conducting a more structured and tailored job search

effort. . . .” See Rule 130.102(e)(8) (which requires consideration of any job search plan by the injured employee). In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer’s determination 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 claimant appears to argue that he is entitled to SIBs for the period from February 26 through April 8, 2003, given the determination that he had no ability to work during that period. We have said that entitlement to SIBs is based on a quarterly, not a weekly, analysis. Texas Workers’ Compensation Commission Appeal No. 022691, decided December 9, 2002. In view of our decision above, the claimant is not entitled to SIBs.

The decision and order of the hearing officer is affirmed.

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

**PRENTICE-HALL CORPORATION SYSTEM, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge