

APPEAL NO. 031741
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 June 12, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 9th and 10th quarters, and that the claimant's compensable injury of _____, does not extend to include depression. The claimant appeals, contending that the evidence establishes that she is entitled to SIBs for the 9th and 10th quarters and that her depression is causally related to her compensable injury. The respondent (carrier) asserts that the hearing officer's decision is supported by the evidence.

DECISION

Affirmed.

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). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying periods for the 9th and 10th quarters. It is undisputed that the claimant did not work or look for work during the relevant qualifying periods. The claimant contended that she had no ability to work during the relevant qualifying periods. 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. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

The hearing officer considered the conflicting evidence and determined that the claimant failed to prove that she had a total inability to work during the relevant qualifying periods and that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work during the relevant qualifying periods. The hearing officer concluded that the claimant is not entitled to SIBs for the 9th and 10th quarters. The hearing officer also considered the conflicting evidence on the issue of whether the claimant's compensable injury extends to include depression and determined that it does not. The claimant had the burden to prove her entitlement to SIBs and that her compensable injury extends to include depression. 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. We conclude that the hearing officer's determinations on the disputed issues are supported by sufficient evidence and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

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

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

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge