

APPEAL NO. 031764
FILED AUGUST 27, 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 (CCH) was held on June 4, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first and second quarters. The claimant appealed, and the respondent (carrier) responded.

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 dispute is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying periods for the first and second 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 due to her compensable injury 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.

Conflicting evidence was presented with regard to whether the claimant had an ability to work during the relevant qualifying periods. The hearing officer found that during the relevant qualifying periods, the claimant had some ability to perform some work in some capacity and that she did not attempt in good faith to obtain employment commensurate with her ability to work. 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 decision that the claimant is not entitled to SIBs for the first and second quarters is supported by sufficient evidence and is 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).

The claimant asserts that the hearing officer erred in not admitting certain exhibits into evidence. However, our review of the CCH record reveals that all of the exhibits that were offered by the claimant were admitted into evidence and thus no error has been shown.

The hearing officer's decision and order are affirmed.

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

**CT CORPORATION SYSTEMS
350 NORTH ST PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge