

APPEAL NO. 031783
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 (CCH) was held on May 27, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 9th and 11th quarters; that the claimant is not entitled to SIBs for the 10th quarter; that the claimant has not permanently lost entitlement to SIBs under Section 408.146(c); and that the appellant (carrier) did not waive the right to contest the claimant's entitlement to SIBs for the 9th, 10th, and 11th quarters. The carrier appeals the hearing officer's determinations that the claimant is entitled to SIBs for the 9th and 11th quarters, and that the claimant has not permanently lost entitlement to SIBs under Section 408.146(c). The claimant filed a response requesting that the hearing officer's decision be affirmed. There is no appeal of the hearing officer's determinations that the claimant is not entitled to SIBs for the 10th quarter and that the carrier did not waive the right to contest entitlement to SIBs for the 9th, 10th, and 11th quarters.

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 for the 9th and 11th quarters is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for those quarters. The hearing officer determined that during the qualifying periods for the 9th and 11th quarters, the claimant made a good faith effort to obtain employment commensurate with his ability to work under the provisions of Rule 130.102(d)(1), in that the claimant returned to work in a position relatively equal to the claimant's ability to work during those qualifying periods. The issue of whether the claimant made a good faith effort to obtain employment commensurate with his ability to work presented a fact question for the hearing officer to resolve from the evidence presented at the CCH. 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 entitled to SIBs for the 9th and 11th 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); Texas Workers' Compensation Commission Appeal No. 020370, decided April 4, 2002.

In a prior decision, the claimant was found not to be entitled to SIBs for the 7th and 8th quarters. The carrier's contention that the hearing officer erred in determining that the claimant has not permanently lost entitlement to SIBs under Section 408.146(c)

is based on its assertion that the claimant is not entitled to SIBs for the 9th quarter. Since we are affirming the hearing officer's decision that the claimant is entitled to SIBs for the 9th and 11th quarters, we conclude that the hearing officer did not err in determining that the claimant has not permanently lost entitlement to SIBs under Section 408.146(c), which provides that an employee who is not entitled to SIBs for 12 consecutive months ceases to be entitled to any additional income benefits for the compensable injury.

We affirm the hearing officer's decision and order.

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

**JIM MALLOY
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Robert W. Potts
Appeals Judge

CONCUR:

Veronica Lopez-Ruberto
Appeals Judge

Edward Vilano
Appeals Judge