

APPEAL NO. 031847  
FILED SEPTEMBER 2, 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 16, 2003. The hearing officer determined that: (1) the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third, fourth, fifth, and sixth quarters; (2) the respondent (carrier) is relieved from liability for SIBs for the third and fourth quarters and for the fifth quarter through March 16, 2003, because of the claimant's failure to timely file applications for these quarters; (3) the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c); (4) the claimant should not be relieved of the effects of the Benefit Dispute Agreement (TWCC-24), dated October 12, 2000; (5) the claimant did not have disability from July 19 through September 19, 1999; and (6) the claimant's average weekly wage (AWW) is \$491.60. The claimant appealed the hearing officer's determination with regard to entitlement to fourth, fifth and sixth quarter SIBs; failure to timely file applications for fourth and fifth quarter SIBs; loss of entitlement to SIBs; and AWW. The carrier urges affirmance. The remaining determinations were not appealed and have become final. Section 410.169.

DECISION

Affirmed.

**ENTITLEMENT TO SIBS**

The hearing officer did not err in determining that the claimant is not entitled to fourth, fifth, and sixth quarter SIBs. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102)) establish the requirements for entitlement to SIBs. At issue was whether the claimant met the good faith requirement by showing that she had no ability to work during the qualifying periods, pursuant to Rule 130.102(d)(4). We have previously held that here is no condition in Rule 130.102(d)(4) that limits the "other records," as to time of inception, to those created during the qualifying period for the quarters at issue. Texas Workers' Compensation Commission Appeal No. 992197, decided November 18, 1999. The credibility to be given to the record is the province of the hearing officer as sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). 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 (Tex. 1986).

The hearing officer did not err in determining that the carrier is relieved from liability for SIBs for the fourth quarter and the fifth quarter through March 16, 2003, because of the claimant's failure to timely file applications for these quarters. Rule 130.105(a)(1) provides, in pertinent part, that an injured employee who does not timely

file an application for SIBs with the insurance carrier shall not receive SIBs for the period of time between the beginning date of the quarter and the date on which the form was received by the insurance carrier, unless the insurance carrier failed to timely mail the form to the injured employee as provided by Rule 130.104. Rule 130.104(b), in turn, provides that the carrier shall send the injured employee a copy of the application for SIBs and the proper address to file the subsequent application, with the first monthly payment of SIBs for any eligible quarter and with any carrier determination of nonentitlement. An affidavit from the carrier's adjuster indicates that the claimant was mailed an application for third quarter SIBs with the carrier's determination of nonentitlement to second quarter SIBs. It is undisputed that the claimant did not file her application for third quarter SIBs, as well as fourth and fifth quarter SIBs, with the carrier until March 17, 2003. The carrier's obligation to send the claimant an application for the fourth and fifth quarter SIBs, therefore, was not triggered in this case. Texas Workers Compensation Commission Appeal No. 020047, decided February 21, 2002; Texas Workers Compensation Commission Appeal No. 021776, decided August 28, 2002. Accordingly, we perceive no error in the hearing officer's determination.

The hearing officer did not err in determining that the claimant has permanently lost entitlement to SIBs. Section 408.146(c) 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. In view of our affirmance above, we likewise affirm the hearing officer's determination that the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c).

### **AWW**

The hearing officer did not err in determining that the claimant's AWW is \$491.60. The claimant contended that her hourly rate of pay for the 13 weeks preceding her date of injury was \$14.50, bringing her AWW to \$580.00. This was a question of fact for the hearing officer to resolve. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION FOR Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR  
9120 BURNET ROAD  
AUSTIN, TEXAS 78758.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge