

APPEAL NO. 031883
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 9, 2003. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 11th, 12th, 13th, and 14th quarters.

The claimant appealed, contending that the designated doctor had not examined him (in the claimant's opinion), that another doctor who had an opinion that the claimant had some ability to work "is an Insurance [Company] doctor," and that he is entitled to SIBs for the quarters at issue. The claimant subsequently provided additional information, most of which was available but not submitted at the CCH, for the first time as "additional documents" which were untimely as an appeal. The file does not contain a response from the carrier.

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 claimant appeals, contending that he had a total inability to work in any capacity thus meeting the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2). The hearing officer's determination on the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1) has not been appealed. It appears undisputed that the qualifying periods for the 11th, 12th, and 13th quarters were from March 7 through December 4, 2002, and the qualifying period for the 14th quarter was from December 5, 2002, through March 5, 2003.

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. The hearing officer found that the narrative reports of Dr. L and Dr. B "do not explain or establish . . . a total inability to work during the [relevant] qualifying periods." We have reviewed Dr. L's reports, including the January 15, 2003, report and Dr. B's report including the March 21, 2002, report and conclude that the hearing officer's determination is supported by the evidence.

Dr. D was appointed as a Texas Workers' Compensation Commission (Commission)-selected designated doctor pursuant to Section 408.151 to determine if the claimant's condition had improved sufficiently to allow the claimant to return to work.

After an examination, in a report dated November 1, 2002 (found by the hearing officer to have been filed with the Commission on December 17, 2002), Dr. D concluded that the claimant “is not ready to go back to any type of work right now.” In evidence is surveillance videotape, taken in November 2002, showing the claimant walking with a cane, walking without a cane, driving a car, and gassing the car at a self-service pump. A copy of the surveillance videotape was sent to Dr. D by the Commission at the request of the carrier. Dr. D, in an amended report dated February 11, 2003 (found by the hearing officer to have been filed with the Commission on February 17, 2003), after commenting on the videotape concluded, “that [the claimant] has no limitations and disability from his injury associated from work.” We note that Dr. D’s first report was entitled to presumptive weight under Section 408.151(b) and Rule 130.110 until Dr. D amended his report based on newly provided physical evidence, and the amended report then had presumptive weight, in this case, against the claimant’s position.

The claimant, in his appeal, contends that Dr. D did not examine him; however, Dr. D’s detailed report dated November 1, 2002, would indicate otherwise and even the claimant concedes that Dr. D talked with him but contends that that did not constitute an examination. The hearing officer’s determination that the claimant did not meet the requirements of Rule 130.102(d)(4) is supported by the evidence.

We have reviewed the complained-of determinations and conclude that the hearing officer’s determinations are not 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).

We affirm the hearing officer's decision and order.

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 STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge