

APPEAL NO. 031937
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 30, 2003. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the first and second quarters.

The appellant (carrier) appeals, contending that the claimant had some ability to work during the qualifying periods and that a doctor's report containing a specific narrative explaining how the injury causes a total inability to work was outside the qualifying periods and was "inconsistent" with other medical reports. The file does not contain a response from the claimant.

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 carrier's position is that "the medical information for the qualifying periods indicated an ability to work, requiring a good faith job search." The direct result element of Section 408.142(a)(2) and Rule 130.102(b)(1) has not been appealed. The parties stipulated that the claimant sustained a compensable right knee injury on _____; that the claimant's impairment rating is 15% or more; and that the dates of the qualifying periods were from May 10 through August 8, 2002, for the first quarter qualifying period, and August 9 through November 7, 2002, for the second quarter qualifying period.

The claimant seeks to show that he has made a good faith effort to obtain employment commensurate with his ability to work because he had a total inability to work. 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 claimant had no ability to work and that the medical reports of Dr. R provide a narrative that shows that the claimant is unable to perform any work in any capacity. We have reviewed Dr. R's records and particularly his report dated March 30, 2003 (which referred to the claimant's condition during the qualifying periods), and conclude that the hearing officer's determination is supported by sufficient evidence.

The carrier contends that there are other records that show that the claimant is able to return to work, referencing a functional capacity evaluation (FCE) performed on September 25, 2001. Although the hearing officer does not comment on that report,

she could find that it was performed some seven months prior to the qualifying period for the first quarter and prior to knee surgery on the claimant's left (noncompensable) knee. Further the FCE states that the claimant "is currently functioning only at a light physical demand level" which the hearing officer could find was not the same as an ability to return to work. Finally the carrier references a report from Dr. BR dated October 24, 2002, which states that the condition of the claimant's right knee "appears to be unchanged since the FCE was performed" (in September 2001). However, only two months prior to his October 24, 2002, report, Dr. BR in a report dated August 22, 2002, stated that the claimant "is currently totally precluded from any type of work as he has severe problems walking, standing and climbing stairs."

We have carefully reviewed the appealed determinations and the medical evidence on which the appeal is based and conclude that the hearing officer's decision is supported by the evidence and is 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 **EMPLOYERS INSURANCE OF WAUSAU** and the name and address of its registered agent for service of process is

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge