

APPEAL NO. 031977  
FILED SEPTEMBER 10, 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 23, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth and fifth quarters. The claimant appeals, contending that the hearing officer's decision is against the great weight and preponderance of the evidence and that the respondent (carrier) failed to comply with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.108(a) (Rule 130.108(a)) because the carrier had no factual or legal basis to change its position from the prior three quarters. The carrier asserts that the evidence supports the hearing officer's decision.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the fourth and fifth quarters. The claimant asserted that he had no ability to work during the relevant qualifying periods. It is undisputed that the claimant did not work or look for work 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.

The hearing officer found that during the relevant qualifying periods the claimant had some ability to work and that the claimant did not attempt in good faith to obtain employment commensurate with his ability to work. The hearing officer concluded that the claimant is not entitled to SIBs for the fourth and fifth quarters. Conflicting evidence was presented at the CCH regarding the claimant's 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 is supported by sufficient evidence and that it 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).

With regard to the claimant's assertion regarding the carrier's failure to comply with Rule 130.108(a), we note that the CCH record reflects that the carrier did have a factual and legal basis for disputing the claimant's entitlement to SIBs for the fourth and

fifth quarters and that there was no showing that the carrier did not compare the factual situation of the qualifying period for the previous quarter with the factual situation of the current qualifying periods. In addition, we have held that a carrier's failure to make such a comparison would involve a matter for the Division of Compliance and Practices and would not be grounds for finding reversible error. Texas Workers' Compensation Commission Appeal No. 021366, decided July 1, 2002; Texas Workers' Compensation Commission Appeal No. 031555, decided July 22, 2003.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR  
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Edward Vilano  
Appeals Judge