

APPEAL NO. 032063
FILED SEPTEMBER 19, 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 appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth and sixth quarters. The claimant has appealed and asserts that the hearing officer abused his discretion in considering a document not in evidence in making his decision, and further urges that his decision should be reversed on factual sufficiency grounds. The respondent (carrier) has responded and urges affirmance.

DECISION

Affirmed.

The claimant asserts that the hearing officer abused his discretion in considering evidence that was not in evidence. Essentially, the claimant contends that the hearing officer abused his discretion in considering hearsay evidence, as the evidence was contained in a document that was admitted into evidence. However, the claimant never objected to this admission of the evidence or the use of the document in the carrier's argument and so error, if any, was waived. Texas Workers' Compensation Commission Appeal No. 970552, decided May 12, 1997; Texas Workers' Compensation Commission Appeal No. 93514, decided August 5, 1993.¹

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 is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the fifth and sixth quarters. The claimant asserted that he had no ability to work due to his compensable injury. The hearing officer found that the claimant did not meet the requirements of Rule 130.102(d)(4), that the claimant failed to submit a medical narrative showing how his compensable injury caused an inability to work during the qualifying periods for the fifth and sixth quarters, and that the records of Dr. W and a functional capacity evaluation dated December 30, 2002, indicated that the claimant was able to return to work during the relevant qualifying periods. Whether a claimant satisfied the good faith requirement for SIBs entitlement is a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing (Section 410.165(a)) and as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). We conclude that the hearing officer's

¹ We note that the rules of evidence do not apply and that the hearing officer decided what weight to give the evidence. *Compare* Texas Workers' Compensation Commission Appeal No. 94106, decided March 7, 1994.

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, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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

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

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge