APPEAL NO. 032132
FILED OCTOBER 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 July 10, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth quarter. The claimant appealed the hearing officer's determination based on sufficiency of the evidence grounds. The claimant contends that the hearing officer refused to follow "the unanimous medical opinion of total inability to work." The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back injury on _____; that the claimant reached maximum medical improvement on July 3, 2001, with a 17% impairment rating; that the claimant has not commuted any impairment income benefits; that the qualifying period for the fourth quarter of SIBs was from December 12, 2002, through March 12, 2003; and that the fourth quarter of SIBs was from March 26 through June 24, 2003. The claimant contends he had no ability to work as a result of his compensable injury during the qualifying period in dispute. Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative requirements for SIBs.

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 an ability to work; that no medical evidence, including the June 21, 2002, letter of Dr. N, singly or cumulatively constituted a medical narrative which specifically explained how the claimant's compensable injury of _____, caused an inability to work during the qualifying period; and, that there was no other record in evidence which showed that the claimant could return to work during the qualifying period. The hearing officer determined that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work during the qualifying period, therefore he was not entitled to SIBs for the fourth quarter.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial

Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to 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); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the challenged findings of the hearing officer.

We affirm the decision and order of the hearing officer.

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

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

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Robert W. Potts
Appeals Judge