

APPEAL NO. 032255
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 29, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 13th (February 28 through May 29, 2002), 14th (May 30 through August 28, 2002), 15th (August 29 through November 27, 2002), and 16th (November 28, 2002, through February 26, 2003) quarters. The claimant appealed, disputing the determinations that he had an ability to work and that he is not entitled to SIBs for the quarters in dispute. The respondent (carrier) responded, urging affirmance.

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. The parties stipulated that the qualifying period for the 13th quarter was from November 16, 2001, through February 14, 2002; that the qualifying period for the 14th quarter was from February 15 through May 16, 2002; that the qualifying period for the 15th quarter was from May 17 through August 15, 2002; and that the qualifying period for the 16th quarter was from August 16 through November 14, 2002.

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 noted that arguably the medical evidence from the claimant's treating doctor considered in the aggregate constitutes the required narrative. However, the hearing officer further noted that the reports of Dr. M, Dr. B, and the functional capacity evaluation (FCE) are other records which show the claimant was able to return to work. The claimant contends that these records do not show an ability to work because the records do not consider the entire injury. The FCE concluded that the claimant is able to work at the sedentary level. Dr. M and Dr. B both concluded that the claimant is capable of returning to work in a limited-duty position. Whether the records show that the claimant was able to return to work was a factual determination within the province of the hearing officer to resolve.

Nothing in our review of the record reveals that the hearing officer's determination that the claimant had some ability to work is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination, or the determination that the claimant is not entitled to SIBs for the quarters at issue, on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for The Home Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge