

APPEAL NO. 032396
FILED OCTOBER 28, 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 September 2, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter. The appellant (carrier) appealed, arguing that the hearing officer's findings that the claimant has no ability to work and is entitled to SIBs for the first quarter are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. The claimant responded, arguing that there was sufficient evidence to support the challenged findings of the hearing officer.

DECISION

Affirmed.

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. The parties stipulated that the claimant sustained a compensable injury on _____; that she reached maximum medical improvement on May 20, 2001, with an impairment rating of 35%; that the qualifying period for the first quarter started February 11 and ended May 12, 2003; that the first quarter of SIBs was from May 26 through August 24, 2003; that the claimant has not earned any income during the first quarter qualifying period; and that the claimant has not sought any jobs during the qualifying period for the first quarter. The claimant contends that she has met the good faith requirement of Rule 130.102(b)(2) because she has a total inability to work in any capacity.

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 carrier contends that the hearing officer erred in determining that the claimant is entitled to first quarter SIBs. The carrier asserts that the claimant did not meet her burden of proof to establish that she was unable to perform any type of work in any capacity and did not provide a narrative report from a doctor that specifically explains how the injury caused a total inability to work during the qualifying period. However, the hearing officer could find from the evidence that the May 2, 2003, report of Dr. Y is an adequate narrative. Dr. Y considered the claimant's pain and medications, and failed back surgery and noted that the claimant had no ability to perform various specific functions. We conclude that this narrative is adequate to satisfy Rule

130.102(d)(4), and that the evidence is minimally sufficient to support the hearing officer's good faith determination.

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 Co., 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 **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**THE CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge