

APPEAL NO. 032565
FILED NOVEMBER 18, 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) was entitled to supplemental income benefits (SIBs) for the fifth quarter. The appellant (carrier) appealed, disputing the determination and the claimant 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 parties stipulated that the relevant qualifying period was from February 23 through May 24, 2003. 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 as 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. Entitlement to SIBs is a question of fact for the fact finder. 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 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).

The carrier argues that the hearing officer's determination does not conform with prior decisions regarding SIBs eligibility in earlier quarters and contends that there were other records in evidence which showed that the claimant had an ability to work. Each quarter of SIBs entitlement stands alone and the decision of eligibility for one quarter is not binding on determining eligibility for subsequent quarters. Texas Workers' Compensation Commission Appeal No. 000512, decided April 24, 2000. We note that in the instant case the claimant had a morphine pain pump inserted prior to the beginning of the qualifying period for the fifth quarter and there was evidence that the pump caused complications and that the claimant's condition deteriorated during the qualifying period at issue.

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

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

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge