

APPEAL NO. 032582
FILED NOVEMBER 7, 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 August 26, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the eighth quarter. The appellant (self-insured) appeals the findings that (1) the claimant was unemployed as a direct result of her impairment; (2) the claimant had no ability to work; and (3) the claimant's requirement to attempt in good faith to obtain employment commensurate with her ability to work was satisfied because the claimant had no ability to work. The claimant responded, urging affirmance.

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 regulatory requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) through a total inability to work as set out in Rule 130.102(d)(4). 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 parties stipulated that the qualifying period for the eighth quarter was from February 5 through May 6, 2003, and the eighth quarter was from May 21 through August 19, 2003.

Although the self-insured appealed the three matters set forth above by appealing Finding of Fact No. 4, the self-insured's appeal only addressed the third portion of Rule 130.102(d)(4), asserting that the functional capacity evaluation (FCE) done on December 17, 2002, was an other record that shows that the injured employee is able to return to work. We affirm the hearing officer's determination that the claimant's unemployment was a direct result of her impairment, as there is sufficient evidence in the record to support that determination.

Turning to Rule 130.102(d)(4), it is clear from the Statement of the Evidence that the hearing officer found that the report of Dr. E was a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and the evidence supports that determination. Further, she was not persuaded that the FCE was an other record which shows that the claimant is able to return to work, and she discussed the FCE at length, explaining her reasons for determining that it was not credible. See Texas Workers' Compensation Commission Appeal No. 002196, decided October 24, 2000.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. We conclude that the hearing officer's determination that the claimant is entitled to SIBs for the eighth quarter is supported by sufficient evidence and 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 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

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Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge