

APPEAL NO. 032822
FILED DECEMBER 11, 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 October 9, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 12th and 13th quarters. The claimant appeals these determinations on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to 12th and 13th quarter SIBs. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) establish the requirements for entitlement to SIBs. At issue was whether the claimant had no ability to work during the qualifying period. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The fact that a different determination may be drawn from the same evidence is not a sufficient basis to overturn a hearing officer's factual determination. Texas Workers' Compensation Commission Appeal No. 94466, decided May 25, 1994. In view of the applicable law and the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant participated at the hearing, telephonically. The claimant now complains that the hearing officer hung up the phone and "10 minutes later called me back and did not tell me what was going on." The record reveals that the hearing officer called a recess in order to review the claimant's exhibits and ensure full development of the record before closing the hearing. The hearing officer ended the long-distance telephone call during the recess and called the claimant again prior to going back on the record. Our review indicates that the hearing officer did not engage in *ex parte* communications or proceed without the claimant's participation. Additionally, we note that the claimant did not object to this procedure at the hearing. Accordingly, we perceive no error.

The decision and order of the hearing officer are affirmed.

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

**CT CORPORATION
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge