

APPEAL NO. 032898
FILED DECEMBER 30, 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 10, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter. The appellant (carrier) appeals this determination, asserting that the claimant did not satisfy the good faith criteria of Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The carrier also contends that the hearing officer applied an incorrect standard in reaching his determination. The claimant did not file a response.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is entitled to first quarter SIBs. Section 408.142 and Rule 130.102 establish the requirements for entitlement to SIBs. At issue is whether the claimant had no ability to work during the qualifying period, thereby satisfying the good faith requirements of Section 408.142(a)(4) and Rule 130.102(d)(4). 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 Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer found that the claimant provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work. The hearing officer also found that the functional capacity evaluation (FCE) report did not show that the claimant could return to work, citing many of the findings and observations in the report. 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 carrier contends that the hearing officer erred by requiring that the FCE report be issued by a medical doctor. The carrier cites Finding of Fact No. 9. The hearing officer found:

FINDINGS OF FACT

9. The report from [Ms. G], OTR does not show that Claimant can return to work because [Ms. G] is apparently an occupational therapist, not a doctor, and does not have the medical skills or training necessary to render an opinion about Claimant's medical condition and because the findings and observations in Ms. [G's] report—that Claimant “was unable to assume all working and testing position[s], that her time

measurement and functional performance was below DOT standard in the activities requiring stooping, kneeling, and crouching, that Claimant's sitting tolerance is "severely limited," that Claimant's standing tolerance is "severely limited/risk for falls/relies on cane," that Claimant "was very cooperative throughout testing and appeared to have tried her best during manual testing," that "Facial grimacing and poor mechanics was noted during testing," and that Claimant "demonstrated severe functional limitation and limited range [of] motion"--indicate that Claimant is unable to work and do not support Ms. [G's] opinion that Claimant can do sedentary work. [Emphasis added.]

We have said that an "other record" need not be a medical report by a doctor. Texas Workers' Compensation Commission Appeal No. 001723, decided September 8, 2000. Accordingly, the hearing officer erred to the extent that he required the FCE to be issued by a medical doctor. Notwithstanding, we affirm the hearing officer's decision based on the determination that "the findings and observations in Ms. [G's] report . . . indicate that Claimant is unable to work and do not support Ms. [G's] opinion that Claimant can do sedentary work," as stated above.

The decision and order of the hearing officer are affirmed.

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

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

Edward Vilano
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge