

APPEAL NO. 032919
FILED DECEMBER 22, 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 8, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first and second quarters, and that the respondent (carrier) is relieved of liability for SIBs from May 17 through July 2, 2003, because of the claimant's failure to timely file an Application for [SIBs] (TWCC-52) for the second quarter. The claimant appealed, asserting that he had a total inability to work during the qualifying periods for the first and second quarters of SIBs, and also asserting that his TWCC-52 for the second quarter was late because he "did not have the paper work." In its response to the claimant's appeal, the carrier urges 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 to the eligibility criteria of a compensable injury, impairment rating, no commutation of impairment income benefits, and that the qualifying period for the first quarter was from November 3, 2002, through February 1, 2003, and the qualifying period for the second quarter was from February 2 through May 3, 2003. At issue is the requirement of Section 408.142(a)(4) and Rule 130.102(b)(2) that the claimant has made a good faith effort to obtain employment commensurate with his ability to work. The claimant proceeds on a basis that he had a total inability to work in the first and second quarter qualifying periods.

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 hearing officer found that during the qualifying periods at issue, the claimant's treating doctor had released him to return to work light duty, with restrictions. The claimant testified that his treating doctor had verbally informed him that he could not work, and that the medications he was taking, along with the local economy, prevented him from working. We note that there is no narrative report from a doctor which specifically explains how the claimant's compensable injury caused a total inability to work during the relevant time period in the record. Our review of the documents presented at the hearing indicates that there is sufficient support for the hearing officer's determination that the claimant failed to meet the requirements to make a good faith effort to obtain employment under Rule 130.102(d)(4).

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not 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, 176 (Tex. 1986). Because we have affirmed the hearing officer's determination that the claimant is not entitled to SIBs for the first and second quarters, we need not address the hearing officer's determination regarding the timely filing of the TWCC-52 for the second quarter.

We affirm the hearing officer's decision and order.

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

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge