

APPEAL NO. 032974
FILED JANUARY 6, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 23, 2003, and continued with the record closing on October 22, 2003. The hearing officer determined that the appellant/cross-respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth quarter from May 4 through August 2, 2003, and that the respondent/cross-appellant (carrier) is relieved of liability for SIBs for the period of May 4 and continuing through June 31, 2003, because of the claimant's failure to timely file an Application for [SIBs] for the fourth quarter. The claimant appealed the hearing officer's SIBs entitlement determination based on sufficiency of the evidence grounds. The carrier filed an appeal requesting that the carrier's true corporate name be corrected from "The Travelers Indemnity Company" to "The Travelers Indemnity Company of Connecticut."

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Sections 408.142(a) and 408.143 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) provide that an employee is entitled to SIBs when the impairment income benefits (IIBs) period expires if the employee has: (1) an IR of at least 15%; (2) not returned to work or has earned less than 80% of the employee's average weekly wage (AWW) as a direct result of the impairment; (3) not elected to commute a portion of the IIBs; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work.

We first address the claimant's assertion that he did not understand the stipulation that he had "not elected to commute a portion of the impairment income benefits (IIBs)." Since this is a requirement for SIBs eligibility, the stipulation is actually favorable to the claimant and the claimant is not aggrieved by the stipulation.

At issue in this case is whether the claimant met the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1). It is undisputed that the claimant worked for the employer during the qualifying period in dispute and that the claimant accepted an early retirement package at the end of the qualifying period. The claimant testified that he had returned to work performing the same job for the same wages prior to his injury, however, the employer was unable to continue accommodating his light-duty restrictions so it offered the claimant the option of either an early retirement package or termination from his employment. The claimant testified that he did not look for employment during the qualifying period in dispute.

The claimant contends that the hearing officer erred in determining that he failed to meet his burden regarding direct result. The claimant was required to establish that he earned less than 80% of his AWW as a direct result of the impairment from the compensable injury. Section 408.142(a)(2) and Rule 130.102(b)(1). An injured employee has earned less than 80% of the employee's AWW as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings. The Appeals Panel has held that the focus is not solely on whether the claimant has been released to the former job without restrictions. The hearing officer may also consider: (1) why the claimant was unemployed during the filing period; and (2) whether the impairment affected or impacted the claimant's unemployment or underemployment situation. Texas Workers' Compensation Commission Appeal No. 030096, decided March 6, 2003. In the instant case, the claimant testified that he was capable of performing his preinjury job and that if the employer had not offered an early retirement package or terminated him from his employment, he would still be working there. The hearing officer determined that the claimant earned more than 80% of his AWW in a position that was relatively equal to the claimant's ability to work during the qualifying period in dispute. The hearing officer's direct result finding is supported by sufficient evidence.

We have reviewed the complained-of determinations regarding direct result and SIBs entitlement and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and 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).

With regard to the carrier's request to correct the true corporate name of the carrier, we note that the carrier did not provide any evidence to substantiate the correction. Section 410.164 was amended by the addition of subsection (c), which provides as follows:

- (c) At each [CCH], as applicable, the insurance carrier shall file with the hearing officer and shall deliver to the claimant a single document stating the true corporate name of the insurance carrier and the name and address of the insurance carrier's registered agent for service of process. The document is part of the record of the [CCH].

The Hearing Officer's Exhibit No. 2 contains two insurance carrier information documents that state a different true corporate name. The first document states that the true corporate name of the carrier is "The Travelers Indemnity Company" and the other document states the true corporate name of the carrier is "The Travelers Indemnity Company of Illinois." We note that the CCH on September 23, 2003, was continued to provide the carrier the opportunity to investigate and confirm the true corporate name of the carrier in this instant case. The hearing officer sent a show cause letter dated September 24, 2003, to "The Travelers Indemnity Company of Connecticut." At the

October 22, 2003, the carrier argued that the true corporate name of the carrier was "The Travelers Indemnity Company of Illinois," not "The Travelers Indemnity Company of Connecticut"; however, it agreed to proceed and it filed with the hearing officer and delivered to the claimant a single document stating that the true corporate name of the carrier is "The Travelers Indemnity Company." Accordingly, we will rely upon information provided in that document.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **THE TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

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

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge