

APPEAL NO. 033073  
FILED JANUARY 16, 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 was held on October 21, 2003. The hearing officer determined that respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 13th, 14th, and 15th quarters. Appellant (carrier) appealed these determinations on sufficiency grounds. The file does not contain a response from claimant.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant is entitled to 13th quarter SIBs. The parties stipulated that the qualifying period for this quarter was from May 17 through August 15, 2002. The hearing officer determined that claimant had no ability to work during the qualifying period for that quarter, based on the reports of Dr. H. Carrier asserted that the January 15, 2002, report of Dr. S and related functional capacity evaluation showed claimant could work. A doctor's record may be discounted if it was written before the qualifying period and there has been a change in the claimant's condition. See Texas Workers' Compensation Commission Appeal No. 020571, decided April 30, 2002. The hearing officer could find from Dr. H's reports that, after Dr. S wrote his report, there had been a change in claimant's condition and medications that affected his ability to work. The hearing officer determined that no other record credibly showed that claimant could work. We have reviewed the complained-of determinations regarding good faith, ability to work, and the 13th quarter 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 regarding the 13th quarter 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).

Carrier contends the hearing officer erred in determining that claimant is entitled to SIBs for the 15th quarter. Carrier asserts that claimant did not make a weekly job search. Carrier noted that it listed incorrect dates for the qualifying period and that, if the correct qualifying period were to be considered, then claimant did not make a weekly job search. Carriers are required to be accurate in providing information on an Application for [SIBs] (TWCC-52). Where, as here, carrier provides inaccurate dates, carrier is precluded from benefiting from having done so. A carrier will not be permitted to attempt to defeat a claimant's good faith showing by arguing that a claimant did not document a job search in each week of the qualifying period when the claimant can demonstrate that he or she documented a weekly job search using the dates of the qualifying period the carrier provided on the TWCC-52. See Texas Workers' Compensation Commission Appeal No. 010815-s, decided June 6, 2001. Considering

the dates of the qualifying period provided by carrier, claimant made a weekly job search. Carrier contends there is no evidence that claimant relied on the incorrect dates set forth in the TWCC-52. However, the fact that claimant listed job searches during the period specified by carrier is sufficient for the hearing officer to find claimant relied on the dates stated by carrier. The hearing officer could find that claimant made a good faith effort to obtain employment commensurate with the employee's ability to work. We conclude that the hearing officer's determinations regarding the 15th quarter 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, *supra*.

Carrier appealed the direct result determination regarding the three quarters in question. However, the hearing officer could find from the evidence that claimant sustained a serious injury with lasting results and that claimant can no longer perform his former work as a sheetrock mechanic. The hearing officer could find that claimant has earned less than 80% of his average weekly wage (AWW) as a direct result of the impairment from the compensable injury.

Carrier also appealed the determinations regarding the 14th quarter, but did not specify in its brief why it believes the hearing officer erred. The hearing officer could find from the evidence that, during the qualifying period for that quarter, claimant returned to work in a position which is relatively equal to his ability to work and that claimant earned less than 80% of his AWW as a direct result of the impairment from the compensable injury.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Margaret L. Turner  
Appeals Judge