

APPEAL NO. 033081
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 was held on October 24, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appeals essentially on sufficiency of the evidence grounds and asserts that the hearing officer erred in considering the report of the required medical examination (RME) doctor. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to first 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 is whether the claimant had no ability to work during the first quarter 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 hearing officer found that the claimant did not provide a narrative report which specifically explained how the compensable injury caused a total inability to work and that the RME doctor's report showed that the claimant was able to return to work. In view of 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).

As stated above, the claimant asserts that the hearing officer erred in considering the report of the carrier's RME doctor, because the claimant did not receive the report during the first quarter qualifying period. To be clear, the claimant does not contend that the report was not timely exchanged pursuant to Rule 142.13(c), regarding discovery of documentary evidence. Under these circumstances, we are aware of no requirement which would preclude the hearing officer from considering the RME doctor's report. Additionally, in view of the determination that the claimant did not provide a narrative report as required by Rule 130.102(d)(4), we will not reverse the hearing officer's decision that the claimant is not entitled to first quarter SIBs.

The decision and order of the hearing officer are affirmed.

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

**DOROTHY C. LEADERER
1999 BRYAN STREET
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge