

APPEAL NO. 033109
FILED JANUARY 13, 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 November 6, 2003. With respect to the issues before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to include skin lesions/ulcers/infections, and that he is not entitled to supplemental income benefits (SIBs) for the second quarter. In his appeal, the claimant challenges those determinations as being against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that he received an impairment rating of 15% or greater; that he did not commute his impairment income benefits; that the second quarter of SIBs ran from August 4 to November 2, 2003, with a corresponding qualifying period of April 21 to July 20, 2003; and that the claimant did not seek employment during the qualifying period for the second quarter. Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by showing that he had a total inability to work during the qualifying period for the second quarter. 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 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 did not err in determining that the claimant did not satisfy the good faith requirement of Rule 130.102(d)(4). The hearing officer was not persuaded that the evidence presented by the claimant was sufficient to satisfy the requirements of Rule 130.102(d)(4). Specifically, the hearing officer determined that there was not a narrative that specifically explained how the claimant's injury caused a total inability to work. Nothing in our review of the record reveals that the hearing officer's determination in that regard is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb the hearing officer's good faith determination, or the determination that the claimant is not entitled to SIBs for the second quarter, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer also did not err in determining that the claimant's compensable injury does not extend to include skin lesions/ulcers/infections. That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was not persuaded that the claimant sustained his burden of proving that his compensable injury included the skin lesions/ulcers/infections. Our review of the record does not reveal that the hearing officer's extent-of-injury determination is so against the great weight and preponderance of the evidence as to compel its reversal. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CASUALTY RECIPROCAL EXCHANGE** and the name and address of its registered agent for service of process is

**FRED S. STRADLEY
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DALLAS, TEXAS 75243-4355.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge