

APPEAL NO. 033147
FILED JANUARY 27, 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 April 8, 2003. In Texas Workers' Compensation Commission Appeal No. 031199, decided July 3, 2003, the Appeals Panel reversed hearing officer 1's decision that the appellant (claimant) is entitled to supplemental income benefits (SIBs) for the seventh and eighth quarters and remanded the case to hearing officer 1 because he had based his decision on evidence that was not made a part of the CCH record. The decision on remand reflects that, because hearing officer 1 was no longer employed by the Texas Workers' Compensation Commission, the parties were contacted and given the option of having another CCH before another hearing officer or having (hearing officer 2) review the CCH record and issue a decision. Hearing officer 2 indicates that the parties agreed that he should review the CCH record and issue a decision. In the decision on remand, hearing officer 2 decided that the claimant is not entitled to SIBs for the seventh and eighth quarters. The claimant appeals, contending that he did provide a narrative report from a doctor which specifically explained how the injury caused a total inability to work, and that hearing officer 2's decision on remand is contrary to the great weight and preponderance of the evidence. The respondent (carrier) asserts that sufficient evidence supports the decision on remand.

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 SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the seventh and eighth quarters. The claimant contended that as a result of his compensable injury, he had no ability to work during the relevant qualifying periods. It is undisputed that during the relevant qualifying periods the claimant did not work or look for work and that he was not participating in a vocational rehabilitation program sponsored by the Texas Rehabilitation Commission or by a private provider.

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. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with

his or her ability to work every week of the qualifying period and document his or her job search efforts.

Hearing officer 2 found that the claimant did not provide a narrative report from a doctor, which specifically explains how the claimant's injury caused a total inability to work during the relevant qualifying periods. Hearing officer 2 further found that the claimant did not establish that he had no ability to work during the relevant qualifying periods, and that he did not make a good faith effort to find employment during the relevant qualifying periods. Hearing officer 2 concluded that the claimant is not entitled to SIBs for the seventh and eighth quarters. Whether the claimant provided a narrative report from a doctor which specifically explains how the injury caused a total inability to work was essentially a fact question for the hearing officer to determine from the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.169. We conclude that hearing officer 2's decision on remand is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order on remand.

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

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge