

APPEAL NO. 033234  
FILED FEBRUARY 5, 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 17, 2003. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) impairment rating (IR) from his injury of \_\_\_\_\_, is 21%, and that the claimant is not entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appeals the hearing officer's determination that he is not entitled to SIBs for the first quarter, contending that he had no ability to work during the qualifying period for the first quarter, which was from January 26 through April 26, 2003. The respondent (carrier) asserts that the evidence supports the hearing officer's determination that the claimant is not entitled to SIBs for the first quarter and requests affirmance of that decision. There is no appeal of the hearing officer's determination that the claimant's IR is 21% and thus that determination has become final under Section 410.169.

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 period for the first quarter. It is undisputed that the claimant neither worked nor looked for work during the qualifying period. The claimant contended that he had no ability to work as a result of his compensable injury during the qualifying period.

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 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.

Conflicting evidence was presented with regard to the claimant's ability to work. While the claimant's treating doctor opined that the claimant is unable to work due to chronic pain and medications he is taking, other reports reflect that the claimant is capable of performing light-duty work. The hearing officer found that during the qualifying period for the first quarter, the claimant was not totally unable to perform any

type of work in any capacity, and that he did not make a good faith search for employment commensurate with his ability to work. The hearing officer concluded that the claimant is not entitled to SIBs for the first quarter. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision that the claimant is not entitled to SIBs for the first quarter is supported by sufficient evidence and that it 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 hearing officer's decision and order.

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

**CT CORPORATION  
350 NORTH ST. PAUL STREET, SUITE 2900  
DALLAS, TEXAS 75201**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Margaret L. Turner  
Appeals Judge