

APPEAL NO. 033241  
FILED FEBRUARY 19, 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 November 25, 2003. The hearing officer decided that the respondent/cross-appellant (carrier herein) is not entitled to any reduction in the appellant/cross-respondent's (claimant herein) benefits based upon contribution and that the claimant is entitled to supplemental income benefits (SIBs) for the eighth quarter, September 5 through December 4, 2003. The carrier appeals both of these determinations. The claimant appeals, requesting we clarify the hearing officer's decision to determine that the carrier is not entitled to reduce the claimant's SIBs based upon contribution. There is no response from either party to the other party's request for review in the appeal file.

#### DECISION

We reform the decision of the hearing officer to reflect that the hearing officer determined that the carrier was not entitled to reduce the claimant's SIBs based upon contribution. Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

In her decision, the hearing officer states that an issue before her is whether the carrier is entitled to reduce the claimant's impairment income benefits (IIBs) based upon contribution and proceeds to conclude that the carrier is not entitled to reduce IIBs. The hearing officer stated at the CCH, and the parties agreed, that the issue before the hearing officer was whether or not the carrier could reduce the claimant's SIBs based upon contribution. This was the issue that was reported at the benefit review conference. It is obvious that the hearing officer's references to IIBs were typographical errors, and the issue she decided was that the carrier is not entitled to reduce the claimant's SIBs based upon contribution. We reform her decision and order to reflect this.

Section 408.084 provides as follows in relevant part:

- (a) At the request of the insurance carrier, the [Texas Workers' Compensation Commission (Commission)] may order that [IIBs] and [SIBs] be reduced in a proportion equal to the proportion of a documented impairment that resulted from earlier compensable injuries.
- (b) The [C]ommission shall consider the cumulative impact of the compensable injuries on the employee's overall impairment in determining a reduction under this section.

The hearing officer found, as a matter of fact, that considering the cumulative impact, the carrier was not entitled to contribution. The hearing officer stated that the medical evidence presented in support of contribution was conclusory and failed to provide a cumulative impact analysis. The carrier argues that the hearing officer failed to give proper weight to the opinion of its medical expert regarding contribution. Conflicting evidence was presented regarding the proper amount of contribution. 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 from the evidence presented. The hearing officer's decision is supported by sufficient evidence and 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, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. The SIBs criteria in issue in this case are whether the claimant satisfied the good faith requirement by satisfactorily participating in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) pursuant to Rule 130.102(d)(2). There was conflicting evidence in the record concerning whether or not the claimant satisfactorily participated in a TRC program. As the finder of fact, the hearing officer determines what facts the evidence has established. Our review of the record reveals that the hearing officer's determination that the claimant did satisfy the good faith requirement under Rule 130.102(d)(2) 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 or manifestly unjust. Thus, no sound basis exists for us to reverse the determination that the claimant is entitled to SIBs for the eighth quarter on appeal. Cain, supra. See also Texas Workers' Compensation Commission Appeal No. 030784, decided May 8, 2003.

As reformed the decision and order of the hearing officer are affirmed.

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

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Michael B. McShane  
Appeals Panel  
Manager/Judge