

APPEAL NO. 040316
FILED MARCH 30, 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 January 12, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first and second quarters. The claimant appeals these determinations on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to first and second 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 was whether the claimant had no ability to work during the qualifying periods. 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 Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer determined that the claimant's narrative report was not credible and the claimant, thus, failed to satisfy his burden of proof. In view of the applicable law and 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).

The claimant complains that the hearing officer made an independent medical judgment with regard to his ability to work, based on no evidence. Our review of the record reveals that the hearing officer considered the claimant's narrative report in view of The Merck Manual. We note that the hearing officer took official notice of The Merck Manual without objection from either party. In view of the record evidence, the hearing officer determined that the claimant's narrative report was not credible. The medical evidence is sufficient to support the hearing officer's decision, even absent any reference to The Merck Manual. Accordingly, we perceive no reversible error. See Texas Workers' Compensation Commission Appeal No. 000663, decided May 17, 2000.

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION**, for **Paula Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge