

APPEAL NO. 040342
FILED APRIL 9, 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 22, 2004. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the first quarter.

The appellant (carrier) appealed, contending that it is "inconceivable" that the claimant's right knee injury causes a total inability to work and that the hearing officer erred in determining that the claimant had provided a report (or reports from the same doctor) which specifically explain how the injury causes a total inability to work. The file does not contain a response from the claimant.

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. The claimant contended that he had no ability to work. It is undisputed that he did not work or look for work 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 his 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.

The hearing officer found that the claimant had no ability to work during the qualifying period and that he made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period. The medical evidence established that the claimant had sustained a severe right knee injury, that the claimant had undergone two unsuccessful right knee surgeries, and that the claimant was currently scheduled for total knee replacement surgery. The hearing officer determined that there was a narrative report from a doctor, which specifically explained how the claimant's injury causes a total inability to work during the relevant qualifying period.

Although several of the reports note the claimant's noncompliance with physical therapy and "submaximal effort" at a functional capacity evaluation (FCE) performed during the qualifying period, Dr. A's reports dated September 24, 2003, October 4, 2003, an undated report (received by the Commission October 15, 2003, which references the FCE) and October 29, 2003, provide the specific narratives to support

the hearing officer's determination. The hearing officer's determination that there is a specific narrative, which specifically explains how the injury causes a total inability to work is supported by the evidence. There is no evidence to the contrary.

The carrier's appeal merely asserts that a knee injury would not cause a total inability to work and that the claimant's own testimony shows that he could answer a telephone (i.e. do telemarketing).

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. We conclude that the hearing officer's decision that the claimant is entitled to SIBs for the first quarter 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.

We affirm the hearing officer's decision and order.

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

**MARCUS CHARLES MERRITT
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge