

APPEAL NO. 040378
FILED APRIL 12, 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 20, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first, second, third, or fourth quarters. The claimant appealed, asserting that her unemployment was a direct result of her impairment from the compensable injury, and that she had a total inability to work due to her compensable injury during the relevant qualifying periods. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, which resulted in a 20% impairment rating. The parties further stipulated that the claimant did not commute her impairment income benefits. Section 408.142 provides in part that an employee is entitled to SIBs if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with her ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), applicable in this case, states that the "good faith" criterion will be met 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[.]

We have emphasized that a finding of no ability to work is a factual question for the hearing officer to resolve. The hearing officer noted that the claimant failed to provide a narrative report, which explained how the compensable injuries limited her overall physical function to the point of complete prohibition of any work activity. The hearing officer further found that the claimant was able to continue to work at her preinjury job without missing any time from work until January 31, 2001, the date she voluntarily retired. Nothing in our review of the record indicates that the hearing officer's decision 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, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

RC
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Daniel R. Barry
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge