

APPEAL NO. 040625
FILED APRIL 28, 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 February 20, 2004. With respect to the single issue before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 10th quarter, which ran from August 8 to November 6, 2003. In her appeal, the claimant argues that the hearing officer erred in determining that she is not entitled to SIBs for the 10th quarter because he improperly determined that the claimant did not return to work in a position relatively equal to her ability to work in the qualifying period. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that she was assigned an impairment rating of 23%; and that the qualifying period for the 10th quarter ran from April 26 to July 25, 2003. It is undisputed that the claimant was working as a caretaker for a man with throat cancer during the relevant qualifying period.

Initially, we consider the claimant's assertion that the hearing officer erred in assigning the burden of proof to her to prove entitlement to SIBs and in requiring her to present her case first. We note that the claimant did not object to the hearing officer's having placed the burden of proof on her at the hearing or to the requirement that she present her case first. In addition, we simply find no merit in the assertion that the burden of proof was improperly placed upon her. The claimant was seeking SIBs benefits in this case and it is axiomatic that as the party seeking benefits, the claimant had the burden to prove her entitlement to those benefits and was likewise required to present her case first.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the 10th quarter. The hearing officer determined that the claimant did not satisfy the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) by returning to work in a job relatively equal to her ability to work. The issue of whether the claimant's job in the qualifying period was a job relatively equal to her ability to work was a factual question for the hearing officer. The hearing officer was persuaded that the claimant had the ability to work in a light-duty position during the qualifying period and that as a result, she was not working in a job relatively equal to her ability to work because her job was a sedentary job. The hearing officer was acting within his role as the fact finder in so finding. The hearing officer's determination that the claimant did not satisfy the requirements of Rule 130.102(d)(1) in

the relevant qualifying period is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust; thus, no sound basis exists for reversing that determination, or the determination that the claimant is not entitled to SIBs for the 10th quarter, on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge