

APPEAL NO. 040650
FILED MAY 3, 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 17, 2004. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fifth quarter, May 24 through August 22, 2002, or the sixth quarter, August 23 through November 21, 2002. The claimant appealed the determination of nonentitlement. The respondent (self-insured) responded, urging affirmance.

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 parties stipulated that the qualifying periods were from May 24 through August 22, 2002, for the fifth quarter, and August 23 through November 21, 2002, for the sixth quarter; that the claimant had a 23% impairment rating; and that impairment income benefits were not commuted.

At issue in this case is whether the claimant satisfied the good faith criteria for SIBs entitlement. Rule 130.102(d)(4), relied upon by the claimant 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[.]

Alternatively, Rule 130.102(d)(5), which was also relied upon by the claimant for SIBs entitlement, provides that the good faith requirement may be satisfied if the claimant "has provided sufficient documentation as described in subsection (e)." Rule 130.102(e) states that "an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts." The rule then lists information to be considered in determining whether the injured employee has made a good faith effort, including, among other things, the number of jobs applied for, applications which document the job search, the amount of time spent in attempting to find employment, and any job search plan.

Whether the claimant satisfied the good faith requirements of either Rule 130.102(d)(4) or Rule 130.102(d)(5) was a factual question for the hearing officer to resolve. The hearing officer noted that the claimant had some ability to work during

both of the qualifying periods in question; that she failed to provide a narrative report from a doctor that specifically explains how the injury causes a total inability to work; that other records show that the claimant is able to return to work; and that she failed to document a job search during each week of the qualifying periods at issue. The hearing officer concluded that the claimant was not entitled to SIBs for the fifth and sixth quarters. 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).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **a self-insured governmental entity through TEXAS COUNCIL RISK MANAGEMENT FUND** and the name and address of its registered agent for service of process is

**FF
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge