

APPEAL NO. 040923  
FILED JUNE 8, 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 conducted on April 6, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second quarter. The claimant appealed, essentially on a sufficiency of the evidence basis. The respondent (carrier) filed a response urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was not entitled to SIBs for the second quarter. At the hearing, it was undisputed that the claimant had not returned to work and had not documented a job search during the relevant qualifying period (November 13, 2003, through February 11, 2004). The claimant asserted that he was entitled to SIBs for the second quarter based on active participation in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC), and on the additional basis that he had a total inability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2) (Rule 130.102(d)(2)) 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 enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period. The claimant presented evidence that he had visited with TRC personnel during the qualifying period and had received some training, but his Individualized Plan for Employment was not finalized until March 8, 2004, more than three weeks after the qualifying period was over. The evidence supports the hearing officer's determination that the claimant was not enrolled in a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period.

In addition, the claimant asserts that he was unable to work in any capacity during the qualifying period. He points to medical records that were presented as evidence at the hearing to support his assertion. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's 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 specifically found that the claimant failed to provide a detailed narrative report. Further, the claimant was examined during January 2004 at the request of the carrier, and the doctor's report states that the claimant could perform "sedentary" work. The hearing officer found this report to be credible and persuasive.

The issue in this case presented a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The hearing officer's determination that the claimant is not entitled to second quarter SIBs is supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of the registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL STREET, SUITE 2900  
DALLAS, TEXAS 75201.**

---

Michael B. McShane  
Appeals Panel  
Manager/Judge

CONCUR:

---

Thomas A. Knapp  
Appeals Judge

---

Margaret L. Turner  
Appeals Judge