

APPEAL NO. 040992
FILED JUNE 15, 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 April 20, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 10th quarter. The claimant appeals, asserting that the hearing officer's decision is contrary to the evidence. The respondent (carrier) replies that the decision of the hearing officer should be affirmed.

DECISION

Affirmed.

The claimant has the burden of proving entitlement to SIBs for any quarter claimed. The eligibility requirements for SIBs are set out in Sections 408.142 and 408.143 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) and will not be repeated here. In the present case, the hearing officer found that the claimant failed to prove that he had a total inability to work in any capacity as required by Rule 130.102(d)(4) during the qualifying period in question. Whether a claimant satisfied the "total inability to work" requirement for SIBs entitlement is a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). As an appellate tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The evidence was conflicting, and applying the standard of review stated above, we find no legal basis to overturn the decision of the hearing officer.

We note that on appeal, the claimant complains that the hearing officer did not make specific findings of fact regarding whether or not a narrative report was provided and whether or not there were other records showing some ability to work. Although the hearing officer neglected to make such specific findings of fact, it is apparent from his discussion of the evidence that he found that the medical records, including those from the claimant's treating doctor, showed that the claimant had some ability to work during the relevant qualifying period. While we agree that a hearing officer should make all required findings of fact in a given dispute, we perceive no reversible error in the hearing officer's failure to do so in this case.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION** for **Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Daniel R. Barry
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge