

APPEAL NO. 041100  
FILED JUNE 17, 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 (CCH) was held on April 8, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter, November 21, 2003, through February 19, 2004, and is not entitled to SIBs for the second quarter, February 20 through May 20, 2004. The claimant appealed, disputing the determinations 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 to the eligibility criteria of a compensable injury, impairment rating, no commutation of impairment income benefits, that the qualifying period for the first quarter was from August 9 through November 7, 2003, and the qualifying period for the second quarter was from November 8, 2003, through February 6, 2004. At issue is the requirement of Section 408.142(a)(4) and Rule 130.102(b)(2) that the claimant has made a good faith effort to obtain employment commensurate with his ability to work. The claimant proceeds on a basis that he had a total inability to work in the first and second quarter qualifying periods.

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 determined that the claimant did not meet the requirements of Rule 130.102(d)(4) to show a total inability to work, that the claimant had some ability to work during the relevant qualifying periods and did not conduct any job searches, that the claimant was not enrolled in and did not satisfactorily participate in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission or a private provider, and that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work during the relevant qualifying periods. The hearing officer concluded that the claimant is not entitled to SIBs for the first and second quarters.

Whether the claimant met the good faith criterion for SIBs entitlement was a fact question for the hearing officer to resolve from the conflicting evidence presented at the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence.

Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Texas Workers' Compensation Commission Appeal No. 031052, decided June 19, 2003. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision is supported by sufficient evidence and that 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 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

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

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge