

APPEAL NO. 041216
FILED JULY 12, 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 15, 2004. The hearing officer resolved the disputed issues by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third or fourth quarters. The claimant appeals these determinations. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Section 408.142 provides that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with his ability to work. At issue in this case is whether the claimant satisfied the good faith requirement provided in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)). Rule 130.102(d)(4) 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[.]

A finding of no ability to work is a factual determination for the hearing officer. The hearing officer found from the evidence that the claimant possessed an ability to work during the qualifying periods in question and, consequently, is not entitled to SIBs for the third or fourth quarters. Nothing in our review of the record indicates that the hearing officer's extent-of-injury determination 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).

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 Petrosurance Casualty Company, an impaired carrier** and the name and address of its registered agent for service of process is

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

Chris Cowan
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge