

APPEAL NO. 041230
FILED JULY 7, 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 19, 2004. The hearing officer determined that the appellant/cross-respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the first through fifth quarters. The claimant appeals this determination. The respondent/cross-appellant (carrier) filed a conditional cross-appeal, arguing that the hearing officer erred in not resolving whether the carrier was relieved from liability for second through fifth quarter SIBs due to the claimant's failure to timely file the corresponding SIBs applications. Both parties responded to the opposition's appeal.

DECISION

Affirmed.

Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

An employee is entitled to [SIBs] if on the expiration of the impairment income benefit [IIBs] period computed under Section 408.121(a)(1) the employee:

- (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;
- (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
- (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
- (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

At issue in this case is whether the claimant satisfied the good faith requirement of Section 408.142(a)(4) by complying with the provisions of either Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(2) or 130.102(d)(4) (Rule 130.102(d)(2) or Rule 130.102(d)(4)). Whether the claimant satisfied the good faith criterion as provided by either of the above-referenced rule provisions was a factual question for the hearing officer to resolve. The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). Nothing in our review of the record indicates that the hearing officer's determination that the claimant is not entitled to first through fifth

quarter SIBs is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In addition to the SIBs entitlement issues, the hearing officer was also presented with the following issue for resolution: whether the carrier is relieved from liability for second through fifth quarter SIBs due to the claimant's failure to timely file the corresponding SIBs applications? However, as the hearing officer determined that the claimant was not entitled to SIBs for any of the quarters in question, we perceive no error in the hearing officer's failure to make findings on the issue complained of by the carrier on appeal.

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, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge