

APPEAL NO. 041270
FILED JULY 21, 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 29, 2004. With regard to the two issues before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the sixth quarter, and that the appellant (self-insured) waived its right to contest the claimant's entitlement to SIBs for the sixth quarter by failing to timely request a benefit review conference (BRC). The self-insured appealed both determinations on sufficiency of the evidence grounds. The claimant responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant satisfied the good faith requirement of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) by demonstrating that he had no ability to work in the relevant qualifying period as a direct result of the impairment from his compensable injury. The hearing officer was persuaded that the evidence presented by the claimant was sufficient to satisfy the requirements of Rule 130.102(d)(4). Specifically, the hearing officer essentially determined that there was a narrative report from the claimant's doctor that specifically explained how the claimant's injury caused a total inability to work and that no other records showed that the claimant had some ability to work in the qualifying period. Nothing in our review of the record reveals that the hearing officer's determinations in that regard are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb the hearing officer's good faith determination, or the determination that the claimant is entitled to SIBs for the sixth quarter, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We note that the self-insured additionally appeals the hearing officer's determination that it waived its right to contest the claimant's entitlement to SIBs for the sixth quarter by failing to timely request a BRC. It is undisputed that the relevant qualifying period began on July 23, 2003, and ended on October 21, 2003. It is also undisputed that the self-insured changed third party administrators (TPA) from Ward North America (TPA 1) to Cambridge Integrated Services (TPA 2) effective September 1, 2003. The claimant testified that he never received any notification of the change in TPAs prior to filing his Application for [SIBs] (TWCC-52) on October 21, 2003, with TPA 1. TPA 1 received the claimant's TWCC-52 on October 23, 2003, however there is no evidence to show what, if any, action TPA 1 took after receiving the TWCC-52. The claimant's representative sent the claimant's TWCC-52 to TPA 1 via fax on October 29, 2003, and to TPA 2 via fax on October 30, 2003. TPA 2 requested a BRC to contest the claimant's entitlement to sixth quarter SIBs on November 7, 2003. The self-insured

argued that its contest of eligibility was timely filed because the claimant was properly notified of the change in TPAs and his initial filing was sent to the wrong TPA.

The hearing officer determined that the self-insured failed to establish that the claimant was properly notified of the change in TPAs, therefore the self-insured received the claimant's TWCC-52 on October 23, 2003, and failed to request a BRC until November 7, 2003. Whether, and when, the claimant was sent, or received, notification of a change in the TPAs presented a question of fact for the hearing officer to resolve. In light of the testimony and evidence presented, we cannot say that the hearing officer's resolution of the dispute regarding this issue is so against the great weight and preponderance of the evidence so as to be clearly wrong or manifestly unjust. Cain, supra.

The hearing officer's decision and order are affirmed.

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

**CITY SECRETARY
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Daniel R. Barry
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge