

APPEAL NO. 041362
FILED JULY 27, 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 May 14, 2004. The hearing officer resolved the disputed issues by determining that the respondent/cross-appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 13th quarter, but is entitled to SIBs for the 14th and 15th quarters; that the claimant timely filed his Application for [SIBs] (TWCC-52) for the 13th quarter, but did not timely file the TWCC-52 for the 15th quarter and, consequently, the appellant/cross-respondent (self-insured) is relieved from liability for the period from February 13 through February 24, 2004; and that the self-insured did not waive the right to contest the claimant's entitlement to SIBs for the 13th, 14th, and 15th quarters. The self-insured appeals the determinations that the claimant is entitled to SIBs for the 14th and 15th quarters. The claimant appeals the determinations that he is not entitled to SIBs for the 13th quarter and that the self-insured did not waive the right to contest the claimant's entitlement to SIBs for the 13th, 14th, and 15th quarters. The self-insured responded to the claimant's appeal, urging that the complained-of determinations should be affirmed. The determinations that the claimant timely filed a TWCC-52 for the 13th quarter, but not for the 15th quarter have not been appealed and have become final pursuant to Section 410.169.

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 her ability to work. We have stated that a finding of "direct result" is sufficiently supported by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. Whether the claimant's unemployment was a direct result of his impairment and whether he satisfied the good faith requirement of Section 408.142 by complying with the provisions of either Rule 130.102(d)(1) or Rule 130.102(e) were factual questions for the hearing officer to resolve. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.- Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's determinations that the claimant

is not entitled to 13th quarter SIBs, but is entitled to 14th and 15th quarter SIBs 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).

Section 408.147 provides that if a carrier (self-insured) fails to request a benefit review conference (BRC) within 10 days after receipt of the TWCC-52, the self-insured waives the right to contest entitlement to SIBs for that quarter. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE 130.108(d) (Rule 130.108(d)) limits the requirement to timely request a BRC to those instances where SIBs were paid in the prior quarter. Where, as in the present case, the immediately preceding quarter is actively under dispute at the time the self-insured receives the TWCC-52, the self-insured must comply with the provisions of Section 408.147(b). Texas Workers' Compensation Commission Appeal No. 032868-s decided December 11, 2003. For this reason, we are not persuaded by the self-insured's argument that it had no obligation to request a BRC. However, there is sufficient evidence to support the determination of the hearing officer that the self-insured timely requested BRCs for the 13th, 14th, and 15th quarters. Accordingly, no sound basis exists for us to disturb that determination on appeal. Cain, *supra*.

The hearing officer's decision and order are affirmed.

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 SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge