

APPEAL NO. 041417
FILED AUGUST 3, 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 17, 2004. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the second and third quarters. The appellant (carrier) appealed the hearing officer's SIBs determination based on sufficiency of the evidence grounds. The appeal file does not contain a response from the claimant.

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 SIBs criteria in dispute are whether during the qualifying period for the second quarter: (1) the claimant earned less than 80% of her average weekly wage as a direct result of the impairment from her compensable injury; and (2) made a good faith effort to obtain employment commensurate with her ability to work.

With regard to the direct result criterion, the hearing officer found that the claimant's unemployment was a direct result of her impairment from her compensable injury during the qualifying periods in dispute. See Rule 130.102(c). With regard to the good faith criterion, the hearing officer found that the claimant was unable to work due to the effects of her compensable injury during the qualifying periods in dispute. Rule 130.102(d)(4). The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). In this case, the claimant presented evidence tending to demonstrate that she has no ability to work and the carrier presented evidence tending to demonstrate that the claimant has some ability to work. The hearing officer had to judge the credibility of the evidence before her in order to determine whether the evidence presented was sufficient to meet the criteria of Rule 130.102(d)(4). The question of whether another record shows an ability to work is a factual question, just as the questions of whether the claimant is unable to work and whether a narrative report specifically explains how the injury caused a total inability to work are factual questions.

The Appeals Panel has held that in cases where a total inability to work is asserted and there are other records that on their face appear to show an ability to work, the hearing officer is not at liberty to simply reject the records as not credible without explanation or support in the record. Texas Workers' Compensation Commission Appeal No. 020041-s, decided February 28, 2002. However, "[t]he mere existence of a medical report stating the claimant had an ability to work alone does not mandate that a hearing officer find that other records showed an ability to work. The hearing officer still may look at the evidence and determine that it failed to show this."

Texas Workers' Compensation Commission Appeal No. 000302, decided March 27, 2000. In the present case, the hearing officer explained that Dr. D reports were not credible since the reports do not establish that the claimant actually had an ability to work, because Dr. D, "on the one hand, opines that the Claimant needs pain management, yet on the other hand, he states that she has functional overlay." The hearing officer concluded that the claimant is entitled to SIBs for the second and third quarters, based upon a total inability to work.

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. 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 hearing officer's decision and order.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge