

APPEAL NO. 041460
FILED JULY 29, 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 (CCH) was held on May 28, 2004. The hearing officer resolved the disputed issues by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth or fifth 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 her ability to work. At issue in this case is whether the claimant satisfied the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), which 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[.]

Whether the claimant established that she had no ability to work during the qualifying periods corresponding to the fourth and fifth SIBs quarters was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). Nothing in our review of the record indicates that the hearing officer's decision that the claimant is not entitled to fourth or fifth quarter SIBs 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 hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge