

APPEAL NO. 041517
FILED AUGUST 11, 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 2, 2004. The hearing officer resolved the disputed issues by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first or second quarters. The claimant appeals these determinations. The respondent (self-insured) urges affirmance of the hearing officer's decision.

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 [IR] 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)(4) (Rule 130.102(d)(4)) or Rule 130.102(d)(5) during the qualifying periods corresponding to the first and second quarter SIBs. Whether the claimant established that he was entitled to SIBs by complying with the provisions of either of the aforementioned rules 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 first or second 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 **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is:

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR
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P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Daniel R. Barry
Appeals Judge