

APPEAL NO. 041693
FILED AUGUST 31, 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 conducted on April 15, 2004. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second, third, fourth, and fifth quarters. The claimant appealed the determinations, essentially on a sufficiency of the evidence basis. The respondent (self-insured) filed a response, urging affirmance.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer did not err in determining that the claimant was not entitled to SIBs for the second, third, fourth, and fifth quarters. At the hearing, it was undisputed that the claimant had not returned to work and had not documented a job search during the relevant qualifying periods for the second and third quarters (May 3 through August 1, 2003, and August 2 through October 31, 2003). The claimant asserted that she was entitled to SIBs for the second and third quarters based on being unable to work in any capacity during the qualifying period for each of those quarters. She points to medical records that were presented as evidence at the hearing to support her assertion. Tex W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work 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. The hearing officer specifically found that the claimant failed to provide a detailed narrative report. The hearing officer found that the claimant's evidence was insufficient to satisfy all the requirements of Rule 130.102(d)(4). The claimant asserted that she was entitled to fourth and fifth quarter SIBs because she had conducted a good faith job search in each of the qualifying periods for those quarters. Nevertheless, there was uncontroverted evidence that the claimant had not conducted job searches during the first two weeks of each of the qualifying periods. The claimant argued that with regard to the qualifying period for the fourth quarter SIBs, she had been confused by correspondence from the Texas Workers' Compensation Commission as to the beginning date of the qualifying period. While the claimant did receive some incorrect information, by September 30, 2003, she had been advised that she was entitled to SIBs and when the fourth quarter would begin. At that point, she could have ascertained the qualifying period for the fourth quarter (November 1, 2003, through January 30, 2004) and conducted her job search during each week of the qualifying period. The claimant did not provide any justification for not conducting job searches during every week of the fifth quarter qualifying period.

The issues in this case presented factual questions 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)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The hearing officer's determinations that the claimant is not entitled to second, third, fourth, or fifth quarters SIBs are supported by sufficient evidence and are 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, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

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

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge