

APPEAL NO. 041726  
FILED SEPTEMBER 2, 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 June 21, 2004. The hearing officer resolved the disputed issue by determining that the respondent/cross-appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 10th quarter, but is entitled to SIBs for the 11th quarter due to the appellant/cross-respondent's (self-insured) waiver of the right to contest the claimant's entitlement to SIBs for that quarter. The self-insured appealed the waiver determination. The claimant appealed the determination that he is not entitled to 10th quarter SIBs. Both parties responded to the opposition's appeal.

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). At issue in this case is whether the claimant satisfied the good faith job search requirement of Section 408.142(a)(4) by complying with Rule 130.102(d)(5), which 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 provided sufficient documentation as described in Rule 130.102(e) to show that he has made a good faith effort to obtain employment. Rule 130.102(e) provides that an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. That subsection then lists information to be considered in determining whether a good faith effort has been made.

Whether the claimant satisfied the good faith requirement for SIBs entitlement was a factual question 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. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Although the claimant lists job contacts for every week of the qualifying period, the hearing officer noted that the claimant's job search efforts seemed focused on qualifying for SIBs, not on finding a job. Nothing in our review of the record indicates that the hearing officer's determination that the claimant is not entitled to 10th quarter SIBs is 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).

Section 408.147 provides that if a carrier (self-insured in this case) fails to request a benefit review conference (BRC) within 10 days after receipt of the Application for [SIBs] (TWCC-52), the self-insured waives the right to contest entitlement to SIBs for that quarter. 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. Under the facts of this case, we perceive no error in the hearing officer's determination that the self-insured waived the right to contest the claimant's entitlement to 11th quarter SIBs and, consequently, he is entitled to SIBs.

The decision and order of the hearing officer are affirmed.

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

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

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Chris Cowan  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge