

APPEAL NO. 042132
FILED OCTOBER 20, 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 July 29, 2004. The hearing officer determined that the appellant (claimant herein) is not entitled to supplemental income benefits (SIBs) for the second quarter. The claimant appealed this determination, essentially on a sufficiency of the evidence basis. The respondent (carrier herein) 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 quarter. At the hearing, it was undisputed that the claimant had not returned to work and had not documented a job search during the qualifying period for the second quarter. The claimant asserted that she was entitled to SIBs for the second quarter based on being unable to work in any capacity during the qualifying period for the quarter. 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 and that other records showed an ability to work. The hearing officer found that the claimant's evidence was insufficient to satisfy all the requirements of Rule 130.102(d)(4).

The issue 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 determination that the claimant is not entitled to second quarter SIBs is supported by sufficient evidence and 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, 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 **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of the registered agent for service of process is

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

Gary L. Kilgore
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Edward Vilano
Appeals Judge