

APPEAL NO. 042222
FILED OCTOBER 26, 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 August 4, 2004. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the 8th, 9th, and 10th quarters.

The appellant (carrier) appealed, contending that the claimant had not met his burden of proof. The file does not contain a response from the claimant.

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). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the 8th, 9th, and 10th quarters. 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 determined that the claimant met the requirements of Rule 130.102(d)(4). The stipulated qualifying periods at issue are from October 23, 2002, through July 22, 2003. Although the hearing officer summarizes several of the doctors' reports, the parties appear to emphasize the reports of Dr. G as being the most applicable. In a brief report dated December 2, 2002, Dr. G writes that he considers the claimant to be "medically disabled, and incapable of more than an hour or two of work a day." The carrier contends this is a record which shows that the claimant is able to return to work. However, in a report dated February 10, 2003, Dr. G clarifies his position, explains why he believes the claimant is unable to work, and concludes that the claimant is "unfit for even part-time work." The carrier also relies on a functional capacity evaluation (FCE) performed on May 4, 2004 (eight plus months after the qualifying period for the 10th quarter), to show an ability to return to work. While the hearing officer may consider a report outside the qualifying periods, the hearing officer, as the sole judge of the relevancy to be given to the evidence, may also consider records well outside the qualifying periods, as not being relevant. In this case the hearing officer apparently did so, noting the FCE was "after the qualifying periods . . . in question."

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it 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).

We affirm the decision and order of the hearing officer.

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 SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Veronica L. Ruberto
Appeals Judge