

APPEAL NO. 950133

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 28, 1994, a hearing was held with (hearing officer) presiding. She determined that respondent (claimant) is entitled to supplemental income benefits (SIBS) for the second quarter, described as October 12, 1994, to January 9, 1995 (with payment beginning on November 17, 1994), and for the third quarter, described as January 10, 1995, through April 9, 1995. Appellant (carrier) asserts that the second quarter is actually September 13, 1994, through December 12, 1994, and the third quarter is December 13, 1994, through March 13, 1995. In addition, the carrier states that the medical evidence does not show an inability to work and a functional capacity evaluation shows that some work can be done. The appeals file contains no reply from the claimant.

DECISION

We affirm with modification of the periods in question.

Claimant worked for (employer) as a machine operator. Little was said of the injury, but medical records indicate it to be carpal tunnel syndrome. The parties stipulated that maximum medical improvement (MMI) was reached on July 12, 1993, with 16% impairment rating (IR). The issues at hearing were whether claimant is entitled to SIBS for the second quarter, "the corrected dates being 10-12-94 through 1-9-95" and whether claimant is entitled to SIBS for the third quarter, "1-10-95 through 4-9-95," The carrier argued at the hearing and asserts on appeal that with MMI on July 12, 1993, and 16% IR, impairment income benefits (IIBS) ceased on June 13, 1994 (16 x 3 = 48 weeks of IIBS-- See Section 408.121). The hearing officer did not explain why the first quarter of SIBS--13 weeks from the end of IIBS--would not end on approximately September 12, 1994 (see Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 130.101 (Rule 130.101)) so that the second quarter would not begin on September 13, 1994. How a date of October 12, 1994, was determined to be the beginning of the second quarter is neither shown nor suggested.

The only other issue on appeal is whether claimant was not required to make a good faith effort to find work because she was unable to work in the periods immediately prior to each quarter in question. With the second quarter beginning on approximately September 13, 1994, claimant provided a medical statement of (Dr F) dated (date of injury), which said that claimant was "not fit to work," after previously stating her diagnosis as "carpal tunnel syndrome." (Since the period for determining entitlement to SIBS in the second quarter is determined based on information gathered in the first quarter, that period would have begun in June 1994; Dr. F also had a statement similar to the (month year) 1994 one quoted above, which was dated on May 17, 1994.) During the second quarter, Dr. F provided a statement dated November 18, 1994, which, like the two others referred to, said that claimant was "not fit to work." There was no issue as to whether claimant's ability to work was a direct result of the impairment.

The carrier points out that Dr. F, prior to the periods in question, on March 28, 1994, said that claimant could do work that had no repetitive movements, no weight lifting over 15 pounds, not stand or sit for long periods, and not bend forward for periods longer than 20 minutes. In addition, a November 1994 functional assessment found that claimant could work four to five hours a day with most functions limited to the "occasional," indicating that she could not sit longer than 20 minutes, could not stand longer than 15 minutes, and could walk occasional short distances. In addition, the functional assessment reported that claimant said she did not intend to return to work but wished to stay home to care for grandchildren.

Claimant denied that she cared for more than one grandchild and reported she could not lift her. She denied making the statement regarding her intent not to seek work.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Section 410.165. Carrier argues that Texas Workers' Compensation Commission Appeal No. 9415559, decided January 5, 1995, said that more than an absence of a release from a doctor is needed to be unable to work. That case dealt with doctor's records that did not address ability to work during the period immediately before the SIBS quarter in question. Dr. F's explanation of why claimant is not fit to work is limited at best and may not have withstood other medical evidence concerning ability to work during the period had there been any; nevertheless Dr. F's reports are not restricted to merely claimant's old job or type of work. Carrier also cites Texas Workers' Compensation Commission Appeal No. 941439, decided December 9, 1994, in which that claimant's doctor stated that sedentary work was possible, not that no work should be done; the decision was affirmed on other grounds.

The hearing officer was provided sufficient evidence upon which to base her decision that claimant was unable to work during each qualifying period and therefore is entitled to SIBS for the second and third quarters. See Texas Workers' Compensation Commission Appeal No. 94398, decided May 19, 1994, and Texas Workers' Compensation Commission Appeal No. 94512, decided June 9, 1994, both of which acknowledge that medical evidence, comparable to that provided herein, makes the determination one of fact for the hearing officer to decide.

Finding that the decision and order recited at the conclusion of the hearing officer's opinion are sufficiently supported by the evidence as to entitlement to SIBS for the second and third quarters, that portion of each is affirmed. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The decision and order are modified to provide that the second quarter is approximately September 13, 1994, through December 12, 1994, and the third quarter is approximately December 13, 1994 through March 13, 1995.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge