

APPEAL NO. 030605
FILED APRIL 2, 2003

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 February 10, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplement income benefits (SIBs) for the first quarter; that the claimant is not entitled to SIBs for the second quarter; and that the respondent (carrier) is relieved of liability for SIBs for the second quarter from October 1 to November 4, 2002, because of the claimant's failure to timely file an Application for SIBs (TWCC-52). The claimant appealed the hearing officer's determinations that she is not entitled to SIBs for the first and second quarters. The carrier responded, urging affirmance.

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 her ability to work during the qualifying periods for the first and second quarters. The claimant contends that she had no ability to work during the qualifying periods in dispute. 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. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, 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.

The hearing officer considered the evidence and found that the claimant had an ability to work during the relevant qualifying periods and that she did not attempt in good faith to obtain employment commensurate with her ability to work during those qualifying periods. The hearing officer determined that the claimant failed to provide a narrative report from a doctor that specifically explains how the injury caused a total inability to work. The evidence reflects that the claimant did not document a job search each week of each qualifying period. 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 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231-4813.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Roy L. Warren
Appeals Judge