

APPEAL NO. 032609  
FILED NOVEMBER 4, 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 August 26, 2003. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the second, third, or fourth quarters. The claimant appealed the SIBs determinations, seeking reversal. In the alternative, he seeks a remand for a determination of whether the medical "narrative" of May 2003 and the questionnaire filled out by the treating doctor meet the requisites of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)). The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. The parties stipulated to the eligibility criteria of a compensable injury, impairment rating, no commutation of impairment income benefits, and that the qualifying period for the second quarter was from September 17 through December 13, 2002, the qualifying period for the third quarter was from December 14, 2002, through March 14, 2003, and the qualifying period for the fourth quarter was from March 15 through June 12, 2003. At issue is the requirement of Section 408.142(a)(4) and Rule 130.102(b)(2) that the claimant has made a good faith effort to obtain employment commensurate with his ability to work. The claimant proceeds on a basis that he had a total inability to work in the second, third, and fourth quarter qualifying periods.

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 found that during all of the qualifying periods at issue, the claimant did not produce narrative medical records specifically explaining how the compensable injury causes a total inability to work. The claimant's appeal references a questionnaire created by the claimant's attorney, to which the claimant's treating doctor, Dr. C, responded, answering pertinent questions specific to each qualifying period. The claimant also points to a letter from Dr. C dated May 21, 2003, in which Dr. C states, in part, "[i]n my professional opinion [the claimant] cannot resume any strenuous work." The hearing officer could believe that the letter does not indicate a total inability to work in any capacity. Our review of these documents indicates that there is sufficient support for the hearing officer's determination that the claimant failed to meet the requirements to make a good faith effort to obtain employment under Rule 130.102(d)(4). Whether the documentation constitutes a narrative report from a doctor which specifically

explains how the injury causes a total inability to work and whether the questionnaire constitutes such a narrative is largely a factual determination within the province of the hearing officer to resolve. We decline to substitute our opinion of a factual resolution for that of the hearing officer.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JAVIER GONZALEZ**  
**3421 WEST WILLIAM CANNON DRIVE, SUITE 131, PMB #113**  
**AUSTIN, TEXAS 78745.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Robert W. Potts  
Appeals Judge