

APPEAL NO. 032858
FILED DECEMBER 22, 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 October 1, 2003. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on September 7, 2001, with a 24% impairment rating (IR); that the respondent (carrier) waived the right to contest Dr. W's September 7, 2001, certification of MMI/IR; and that the claimant is not entitled to supplemental income benefits (SIBs) for the first and second quarters. The claimant appeals the SIBs determinations. The appeal file contains no response from the carrier. The determinations that the carrier waived the right to contest Dr. W's MMI/IR certification and that the claimant reached MMI on September 7, 2001, with a 24% IR have not been appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed as reformed.

The hearing officer's decision reflects that there are two Findings of Fact No. 5. The decision and order are reformed to correct the obvious typographical error and the second Finding of Fact Number 5, which the claimant appeals, is renumbered as Finding of Fact No. 6.

Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

An employee is entitled to [SIBs] if on the expiration of the impairment income benefit [IIBs] period computed under Section 408.121(a)(1) the employee:

- (1) has an [IR] of 15 percent or more as determined by this subtitle from the compensable injury;
- (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
- (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
- (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

Rule 130.102(d)(4), relied upon by the claimant for SIBs entitlement in this case, states that the "good faith" criterion will be met 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[.]

We have emphasized that a finding of no ability to work is a factual question for the hearing officer to resolve. The hearing officer noted that the purported narratives submitted by the claimant were insufficient to satisfy the requirements of Rule 130.102(d)(4), and concluded that the claimant is not entitled to SIBs for the first and second quarters. Nothing in our review of the record indicates that the hearing officer's SIBs determinations are 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).

The decision and order of the hearing officer are affirmed as reformed.

The true corporate name of the insurance carrier is **TOKIO MARINE & FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**BRIAN C. NEWBY
400 WEST 15th STREET, SUITE 200
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge