

## APPEAL NO. 991598

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 25, 1999. The appellant (carrier) and the respondent (claimant) stipulated that the fourth quarter for supplemental income benefits (SIBS) began on May 19, 1999, and will end on August 17, 1999. The hearing officer determined that the claimant's unemployment during the filing period was a direct result of the impairment from the compensable injury. That determination has not been appealed and has become final. The hearing officer also found that during the filing period the claimant had minimal ability to work or to look for work due to his medical condition and medications, that he worked through the Texas Workforce Commission (TWC) exclusively, and that the claimant's contacts with the TWC were a good faith effort to find employment and concluded that the claimant is entitled to SIBS for the fourth quarter. The carrier appealed, contended that those determinations are against the great weight and preponderance of the evidence, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant is not entitled to SIBS for the fourth quarter. A response from the claimant has not been received.

### DECISION

We reverse and remand.

While the claimant was a witness, the hearing officer stated that the qualifying period for the fourth quarter for SIBS began on February 3, 1999, and that the new Texas Workers' Compensation Commission's (Commission) SIBS rules applied. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.102(e) (Rule 130.102(e)) is entitled Job Search Efforts and Evaluation of Good Faith Effort and provides in part ". . . an 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." Rule 130.102(e) also sets forth nine types of information, including registration with the TWC, that may be considered in determining whether or not a claimant made a good faith effort to obtain employment. The only entry concerning job searches during the filing period for the fourth quarter in the Statement of Employment Status (TWCC-52) indicates that the claimant contacted Ms. Q in the TWC on March 22, 1999, for any job available. In a letter dated May 12, 1999, Ms. Q stated that the claimant filed an application for work with the TWC on November 2, 1998, and that since that date she frequently reviewed the TWC job bank in an effort to find a suitable position for him. The record contains information from the TWC concerning seven security officer positions and two loss prevention positions. Information on eight of the positions is dated in 1998 and on one is dated March 1, 1999. The claimant testified that he went to or called the TWC two or three times a week. Ms. W, who assisted the claimant, testified that she took the claimant to the TWC a couple of times during the filing period and also said that it could have been once a week.

The hearing officer made findings of fact that during the filing period the claimant worked exclusively through the TWC and that his contacts with the TWC were a good faith effort to find employment. Even though the hearing officer stated that the Commission's new SIBS rules applied to the disputed issue before him, he did not make findings of fact that the claimant looked "for employment commensurate with [his] ability to work every week of the qualifying period" or that "the claimant document[ed] [his] job search efforts." Under the circumstances of the case before us, we are not able to infer findings of fact that meet the requirements of Rule 130.102(e). We reverse and remand for the hearing officer to make the necessary findings of fact and conclusions of law to resolve the disputed question of whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the filing period and to resolve the issue of whether the claimant is entitled to SIBS for the fourth quarter based on the evidence that was admitted at the hearing held on June 25, 1999. The Decision and Order of the hearing officer contains clerical errors concerning the carrier's exhibits that should be corrected in the Decision and Order on remand.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Judy L. Stephens  
Appeals Judge