

APPEAL NO. 991961

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 convened on August 10, 1999. The hearing lasted about four and one-half hours and the hearing officer kept the record open until August 13, 1999, to receive closing statements from the parties. The appellant (claimant) and the respondent (carrier) stipulated that the qualifying period for the third quarter for supplemental income benefits (SIBS) began on February 12, 1999, and ended on May 13, 1999. It was undisputed that the "new" SIBS rules applied to the issue of whether the claimant is entitled to SIBS for the third quarter. The hearing officer determined that during the qualifying period for the third quarter the claimant's unemployment was a direct result of his impairment from the compensable injury. That determination has not been appealed and has become final under the provisions of Section 410.169. The hearing officer determined that for eight of the weeks during the qualifying period the claimant sought employment with four employers in each of those weeks, that during one week the claimant sought employment with three employers, and that during four of those weeks the claimant did not make job searches. She also determined that during the qualifying period for the third quarter the claimant did not in good faith seek employment commensurate with his ability to work and that he is not entitled to SIBS for the third quarter. The claimant appealed; stated disagreement with the determinations that he did not in good faith seek employment commensurate with his ability to work during the qualifying period and that he is not entitled to SIBS for the third quarter; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor. The carrier responded; quoted from Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b) (Rule 130.102(b)); stated that to be entitled to SIBS the claimant must look for employment commensurate with his ability to work every week of the qualifying period and document his job search efforts; urged that the claimant did not comply with those requirements; and requested that the decision of the hearing officer be affirmed.

DECISION

We affirm the decision and order of the hearing officer.

In his written closing statement, the attorney representing the claimant stated that the claimant did not conduct job searches every week of the qualifying period for the third quarter for SIBS as required by the new Texas Workers' Compensation Commission (Commission) rules and that he might have missed searching for jobs during two of the weeks during the qualifying period. He argued that the claimant made a good faith effort to seek employment commensurate with his ability to work and that the claimant should not be denied SIBS for the third quarter because of a pure technicality. The Statement of Employment Status (TWCC-52) filed by the claimant contains dates the claimant sought work. The hearing officer determined that the claimant did not seek employment during the seventh week of the filing period; however, the TWCC-52 reveals that he sought employment with four employers during that week. We reverse that finding of fact and render a finding that the claimant did seek employment during the seventh week of the filing

period. The claimant did not contend that he sought employment every week during the filing period. The determinations that during three weeks of the filing period the claimant did not seek employment are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). The hearing officer properly applied the 1989 Act and the Commission rules to the facts to conclude that the claimant did not in good faith seek employment commensurate with his ability to work during the qualifying period and that he is not entitled to SIBS for the third quarter.

Even though we reversed one finding of fact and rendered another one, we affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Elaine M. Chaney
Appeals Judge