

APPEAL NO. 991991

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 8, 1999. The single issue at the CCH was the whether the respondent (claimant) was entitled to supplemental income benefits (SIBS) for the first compensable quarter which ran from June 1, 1999, through August 30, 1999. The hearing officer determined that the claimant was entitled to SIBS for the quarter in issue and the appellant (carrier) has appealed. The carrier asserts error in several of the hearing officer's pertinent findings of eligibility, urging that they are contrary to the overwhelming weight of the evidence and not in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)) regarding work search requirements. No response is on file and the carrier has supplied a certified mail receipt from its attempted service on the claimant at his correct address, as reflected in the files and at the CCH, showing the certified mail went unclaimed.

DECISION

Affirmed.

The claimant, an electrician by trade, sustained an injury to his back, hands, and wrists on _____, when he fell from a high ladder; he has twice had surgery on both hands, reached maximum medical improvement, and was assessed a 22% impairment rating. He testified that he has a number of physical restrictions including no repetitive movements because of numbness and swelling in his hands; that he lost a lot of his hand grip; and that he has back pain and limits on lifting and bending. He testified that he went to work doing electrical work during the October through December 1998 time frame but that he had to quit because he could not do the work as a result of his recurring problems with his injuries and physical limitations.

During the qualifying period for the first compensable quarter of SIBS, February to May 1999, the claimant testified and submitted a Statement of Employment Status (TWCC-52) showing that he attempted to find employment at some 17 different places (generally one a week), many of which involved electrician-type positions. He stated that this was the only area he was trained in and that he was looking for electrician-type positions that would be more supervisory or managerial and not physically demanding. He stated that he made applications at some places, that he called other places, that he searched in the newspaper and that he went through friends as contacts. He stated that he started work some four weeks prior to the CCH and that he had two jobs at this time, one as a waiter and the other servicing vending machines. He stated that he contacted the Texas Rehabilitation Commission (TRC) but did not know the date but that it could have been June 1999. He stated that he had been in for testing with the TRC and that he is scheduled for a vocational evaluation. A notation in a letter from the TRC in evidence indicates that the claimant first made contact in February 1999. He also testified that he registered with the Texas Workforce Commission (TWC) and that the agency provided him with job leads. The claimant did not respond to interrogatories submitted by the carrier concerning the SIBS quarter in issue and stated that he never saw them. However, the carrier produced a green card signed by the claimant's wife.

The carrier introduced an investigative report which indicated that the prospective employers listed by the claimant had been contacted or that attempted contacts were made. In a number of the situations, the investigative report indicated that there was no answer when contact was attempted, there was no record of a contact by the claimant, there was no application on file, or the person contacted did not recall. The claimant stated that he subsequently contacted some of the prospective employers cited in the report but that they indicated to him that they had not been contacted by anyone about his possible employment.

Clearly, there does not appear to be an overly aggressive attempt to obtain employment commensurate with the ability to work, particularly under the new, more specific provisions of Rule 130.102(e). Hearing officers need to carefully review and apply the new rules to SIBS cases with quarters beginning on and after May 15, 1999. Texas Workers' Compensation Commission Appeal No. 991634, decided September 14, 1999 (Unpublished). These rules provide for more specific and documented job search efforts which must be weekly. This is shown here, albeit minimally, and, in this regard, the hearing officer could accept the testimony of the claimant over that of the investigative evidence offered by the carrier. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). Also, the provisions setting forth cooperating and registering with the TRC and TWC are shown by the claimant's testimony and some documentary evidence. We cannot say there was no, or insufficient, probative evidence to support the hearing officer's determination in this regard. Also, it is apparent the hearing officer believed the claimant that although he listed electrician in the type of job sought he was attempting in good faith to find less physically demanding positions in this particular career field. In sum, from our review of the evidence we are unwilling to hold that the determinations of the hearing officer were so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. We do not find error as a matter of law. Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ). Accordingly, the decision and order is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge