

APPEAL NO. 000124

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 December 30, 1999. With respect to the issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the first quarter. In his appeal, the claimant essentially argues that the hearing officer's determination that he is not entitled to SIBS for the first quarter is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The carrier did not appeal the hearing officer's determination that the claimant's unemployment in the qualifying period for the first quarter is a direct result of his impairment from the compensable injury and that determination has, therefore, become final pursuant to Section 410.169.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that he reached maximum medical improvement on June 29, 1998, with an impairment rating of 22%; that he did not commute his impairment income benefits; that the first quarter of SIBS ran from October 5, 1999, to January 3, 2000; and that the claimant earned no wages during the qualifying period for the first quarter. The first quarter qualifying period was identified as the period from June 23 to September 21, 1999.

The claimant testified that on _____, he was injured lifting a case of soda cups to an overhead shelf. He stated that when he lifted the case of cups, he felt a sharp pain in his shoulder and down his back. The claimant testified that he has had two shoulder surgeries as a result of his compensable injury. He stated that because of his injury he is not able to do heavy lifting, cannot climb a ladder, and cannot reach or lift overhead. The claimant testified that he sought employment during the qualifying period for the first quarter. He maintained that he contacted 25 employers during the qualifying period and completed approximately 10 applications. He stated that although he had "a few" interviews during the qualifying period, he did not receive any job offers. Finally, the claimant testified that he contacted both the Texas Rehabilitation Commission and the Texas Workforce Commission during the qualifying period, but that neither offered him much help with regard to retraining or his job search effort. On cross-examination, the claimant stated that he contacted the employer where he was injured during the qualifying period and was advised that they did not have a position available within his restrictions. He further testified on cross-examination that he looked for work about four to five hours per day on the days listed on his Statement of Employment Status (TWCC-52) and that he made no job search efforts on the other days in the qualifying period. Finally, he explained that he primarily applied for retail positions because those jobs were consistent with his restrictions, training, and experience and that he listed his preferred hours on his

applications as 8:00 a.m. to 3:00 p.m. because after 3:00 p.m., he picks up his teenage son from school.

The claimant's TWCC-52 is in evidence. It reflects that he made a job contact on July 6, 1999. The next entry reflects a job contact on July 20, 1999. There are no entries on the TWCC-52 documenting job search efforts in the period after July 6th and before July 20th. In addition, the claimant did not submit any other documentation of a job search in that period.

In a "To Whom it May Concern" letter of July 19, 1999, Dr. F, the claimant's treating doctor, stated that he was releasing the claimant to sedentary employment. On March 10, 1999, the claimant underwent a functional capacity evaluation (FCE). The FCE report concludes that the claimant "may be capable of handling **Light** work demands, as defined by the U.S. Department of Labor." (Emphasis in original.) Dr. C examined the claimant at the request of the carrier. In a report dated August 31, 1999, Dr. C stated that the claimant's "condition is compatible with a release to work at a sedentary to light duty level with no repetitive lifting greater than 15-20 lbs."

The claimant contends that he made a good faith job search in the qualifying period for the first quarter. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.102(e) (Rule 130.102(e)) provides in relevant part that "an injured 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." In this case, as noted above, neither the claimant's TWCC-52, nor any other documentation, reflects that the claimant made any job contacts in the period from July 6 to July 20, 1999, and the hearing officer specifically found that the claimant did not make any job search efforts during that period. Her determination in that regard is not so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Under Rule 130.102(e), the hearing officer properly determined that the claimant did not make a good faith effort to look for work commensurate with his ability to work in the qualifying period for the first quarter because she found that the claimant did not look for work in each week of the period as he was required to do.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Tommy W. Lueders
Appeals Judge