

APPEAL NO. 000152

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 27, 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 fourth quarter. In his appeal, the claimant essentially argues that the hearing officer's determinations that he did not make a good faith effort to look for work in the qualifying period for the fourth quarter and that he is not entitled to SIBS for the fourth quarter are 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 fourth 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 assigned an impairment rating of 19% for his compensable injury; that he did not commute his impairment income benefits; that the fourth quarter of SIBS ran from September 17 to December 16, 1999; and that the fourth quarter qualifying period ran from June 5 to September 2, 1999. The claimant testified that at the time of his compensable injury, he was working as an engineer for the employer verifying the specification on a machine, when the ladder he was standing on slipped, causing him to fall. He stated that he injured his right knee, left rotator cuff, low back, and head in the fall. The claimant testified that he had low back surgery in 1996.

The claimant testified that during the qualifying period for the fourth quarter of SIBS, he was cooperating with the Texas Rehabilitation Commission (TRC) and that he also sought employment. He explained that the TRC is assisting him in becoming a Microsoft certified system engineer and that he began the TRC program in 1997. He stated that he has been attending classes regularly; however, he acknowledged that he was not taking any classes in the qualifying period, explaining that he was "going through a transition period with the TRC" in the qualifying period. The claimant stated that he looked for work in the qualifying period based on the recommendations of counselors, the work center at the college, and newspaper classified advertisements. On cross-examination, the claimant acknowledged that he focused all of his job search efforts in computer-related businesses because of the training he is pursuing; however, he explained that he applied for any available position with those employers because he had been advised to "get his foot in the door" in the hope of moving into a networking position with an employer after he began working there. The claimant also acknowledged on cross-examination that he did not list any job search efforts on his Statement of Employment Status (TWCC-52) for the period from June 5 to June 20, 1999.

The claimant contends that he made a good faith job search in the qualifying period for the first quarter based upon his cooperation with the TRC and his job search efforts. 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 June 5 to June 20, 1999, and in her discussion the hearing officer specifically noted that the claimant did not "look for work commensurate with his ability to work every week of the qualifying 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). In accordance with 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 fourth quarter because she determined that the claimant did not look for work in each week of the period as he was required to do.

The claimant also asserts that his participation in the TRC program satisfies the good faith requirement. Rule 130.102(d)(2) provides that an injured employee has made a good faith effort to look for work commensurate with his ability if he "has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the [TRC] during the qualifying period." In her discussion, the hearing officer noted that the "Claimant may have been enrolled in a TRC program, but did not participate in that program during the qualifying period." In his testimony, the claimant acknowledged that in the qualifying period he did not attend any classes, explaining that he was in a "transition period" in his retraining. Sufficient evidence supports the hearing officer's determination that the claimant was not actively participating in vocational rehabilitation during the qualifying period and, as such, the hearing officer properly determined that the claimant did not satisfy the requirements of Rule 130.102(d)(2), which demands both enrollment and participation. See Texas Workers' Compensation Commission Appeal No. 992708, decided January 12, 2000, and Texas Workers' Compensation Commission Appeal No. 992564, decided December 30, 1999 (Unpublished), for examples of two other cases where the Appeals Panel affirmed a hearing officer's determination that the claimants had not satisfied the good faith requirement because they were enrolled in a program but did not actually attend classes for the majority of the qualifying period. Our review of the record does not demonstrate that the hearing officer's determination that the claimant did not satisfy the requirements for establishing good faith premised upon full-time participation in a TRC-sponsored rehabilitation program is so contrary to the great weight and preponderance of the evidence as to compel its reversal on appeal. Pool, *supra*; Cain, *supra*.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge