APPEAL NO. 000262

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 originally held on September 14, 1999. The hearing officer determined that the appellant (claimant) was entitled to supplemental income benefits (SIBS) for the sixth quarter that began on May 18, 1999, and ended on August 16, 1999. The respondent (carrier) appealed. In Texas Workers' Compensation Commission Appeal No. 992321, decided November 22, 1999, the Appeals Panel reversed the decision of the hearing officer and remanded for him to determine whether during the qualifying period for the sixth quarter the claimant in good faith sought employment commensurate with his ability to work based on the 15 job searches documented on the Application for Supplemental Income Benefits (TWCC-52). The Appeals Panel stated that the hearing officer shall consider all of the evidence in the record related to the 15 job searches and other information related to good faith efforts to obtain employment commensurate with the claimant's ability to work. In a letter dated December 21, 1999, the hearing officer advised the parties that an additional hearing would not be held and requested a more legible copy of the TWCC-52 for the sixth quarter. The record was kept open until January 20, 2000, but another copy of the TWCC-52 was not received. The hearing officer rendered another decision in which he determined that during the qualifying period the claimant did not in good faith seek employment commensurate with his ability to work and is not entitled to SIBS for the sixth quarter. An attorney in the law firm representing the claimant and the claimant filed requests for review. The appeal from the claimant contains information that is not in the record and appeals a determination that was not appealed in Appeal No. 992321, *supra,* and became final. The appeal from the attorney states that the claimant sent the original of the TWCC-52 to the carrier, that the copy the claimant has is a poor copy, and that the carrier was obligated to produce a legible copy or explain why it could not; urges that the evidence established that the claimant in good faith sought employment commensurate with his ability to work; and requests that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant is entitled to SIBS for the sixth quarter. The carrier responded, contended that the absence of a legible TWCC-52 was not reversible error, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

In his appeal, the claimant appealed the determination that he had a very limited ability to work during the qualifying period. That determination was not timely appealed in Appeal No. 992321 and became final under the provisions of Section 410.169. In his appeal, the claimant also presented information that is not in the record. Under the provisions of Section 410.203(1), that information will not be considered.

In Appeal No. 992321 the Appeals Panel noted that the copy of the TWCC-52 in the record was extremely difficult to read and stated that effort should be made to obtain a

better copy of the TWCC-52. In a letter to the parties dated December 21, 1999, the hearing officer wrote "[i]f either of you possess a more legible copy of the TWCC-52 on this case, please submit that for my review." The record does not contain a response from either party nor does it indicate that the hearing officer made additional efforts to obtain a legible copy. From what can be read on the TWCC-52, the jobs applied for appear to be in chronological order. What appear to be the fifth and sixth entries are impossible to read and clearly the dates in those entries cannot be determined. The next to last entry contains the date April 21, 1999. The last entry indicates May, the date in the entry is not clear, but the date appears to be 3. The first day of the qualifying period is Wednesday, February 3, 1999, and the last day of the qualifying period is Tuesday, May 4, 1999. The hearing officer made a finding of fact that "[t]he Claimant failed to meet his burden of proof and did not establish the good faith criteria (sic) as required by Rule 130.102(d)(4) [Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4)]." That rule refers to Rule 130.102(e). Both of those rules are set forth in Appeal No. 992321, *supra.* Together they provide that an injured employee has made a good faith effort to obtain work if the employee has provided sufficient documentation, including looking for employment commensurate with the ability to work every week of the qualifying period, to show that the claimant made a good faith effort to obtain employment. The job searches are documented in the TWCC-52. The Appeals Panel has used its one remand and may not remand for the hearing officer to obtain a better copy of the TWCC-52 and to make specific findings of fact that pertain to the requirements in Rule 130.102(d) and (e). However, a finding of fact that the claimant did not provide sufficient documentation to show that he looked for employment commensurate with his ability to work every week of the qualifying period may be inferred or implied. The record is sufficient to support such an inferred or implied finding of fact. The decision of the hearing officer is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The appeal by the attorney representing the claimant states that the claimant provided the original TWCC-52 to the carrier. It is logical to believe that a party has the original TWCC-52. Considering that the copy of the TWCC-52 in the record is extremely poor and that some of the entries in the original copy were not reproduced on the copy in the record and the hearing officer has the responsibility to "ensure the preservation of the rights of the parties and the full development of facts required for the determinations to be made" set forth in Section 410.163(b), the hearing officer should have made additional efforts to obtain a legible copy. However, under the circumstances of this case, the failure to do so did not result in reversible error.

We affirm the decision and order.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Alan C. Ernst
Appeals Judge