

APPEAL NO. 000431

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 9, 2000, a hearing was held. The hearing officer determined that respondent (claimant) was entitled to supplemental income benefits (SIBS) for the third compensable quarter. Appellant (carrier) asserts that claimant did not document that she looked for work every week of the qualifying period and no findings of fact were made that claimant looked for work every week and documented her job search. Claimant replied that the only week she did not look for work was the last week in which she was in the hospital and that she was not told that she had to look for work every week.

DECISION

We reverse and remand.

Claimant worked for (employer) at the time she injured her hand in a machine on _____. She has had four surgeries to the hand, with the last occurring on October 21, 1999. The parties stipulated that claimant sustained a compensable injury, that she has an impairment rating of 15% or more, that no benefits have been commuted, that claimant was unemployed during the qualifying period, and that the qualifying period began on July 30, 1999, and continued through October 28, 1999.

Claimant testified that she looked in newspapers every day for a job. She also said that she regularly went to the Texas Workforce Commission (TWC) for counseling and for preparation for a job but also to fill out applications and then turn them in to TWC who then would send her a card "if's there's a match." This point was not developed as to whether the application she filled out at TWC was to an employer or was a registration for a particular type of job with TWC that was not forwarded to an employer. While carrier stresses that the application for [SIBS] (TWCC-52) shows that claimant was "retraining" and not "looking for employment" during certain weeks of the qualifying period, we do not reach that conclusion in the absence of any findings of fact concerning claimant's looking for employment by the hearing officer. We note that although the "jobs applied for" column reads "retraining," the same line then asks in another column whether an application or resume has been filed, which is marked "yes" by each entry on the TWCC-52 which says, "retraining." The hearing officer should make findings of fact addressing the relevant part of Tex. W.C. Comm'n, 28 TEX. ADMIN CODE § 130.102 (Rule 130.102).

We also note that the hearing officer said in his Statement of Evidence that claimant was not enrolled in a Texas Rehabilitation Commission program during the qualifying period in question, but commented that "preliminary efforts to get into such programs are no less necessary"; that may be true, but Rule 130.102(d)(2) does not list such efforts as one of the ways to satisfy the good faith requirement to qualify for SIBS.

While the hearing officer commented that "minimal" documented contacts were made, the number of contacts is only one of ten factors a hearing officer may consider after a claimant has shown documentation of weekly "look[ing]" for work, when there has been no return to work and when there has been no acceptable retraining. Certainly, if a claimant documented that he looked for work every week of a qualifying period, a fact finder could consider the number of contacts to be "minimal" and still, depending on the facts, find that under all of Rule 130.102(e)(1) through (10) good faith was shown.

The hearing officer should make specific findings of fact concerning the parts of Rule 130.102 which control the factual situation present in this case referencing the particular subsections. If findings of fact address whether claimant looked for work, and whether she documented it, each week of the qualifying period, then the beginnings and endings of the weeks should also be set forth. See Texas Workers' Compensation Commission Appeal No. 992435, decided December 17, 1999, and Texas Workers' Compensation Commission Appeal No. 000149, decided March 8, 2000.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Joe Sebesta
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Alan C. Ernst
Appeals Judge