

## APPEAL NO. 000541

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). On February 10, 2000, a hearing was held. The hearing officer determined that respondent (claimant) was entitled to supplemental income benefits (SIBs) for the the eighth compensable quarter. Appellant (carrier) asserts that claimant did not make job contacts every week because some contacts involved jobs not within his restrictions so therefore should not be counted, that claimant was only looking for jobs to qualify for SIBs, that claimant filled out no applications for work, that he did not spend enough time making his contacts, and that claimant runs cattle. Claimant replied that the hearing officer is the fact finder and the decision should be affirmed.

### DECISION

We affirm.

Claimant worked for (employer) on \_\_\_\_\_, when he slipped and fell on ice injuring his back and hip. Although not listed as such in the findings of fact, the Statement of Evidence shows that the parties stipulated that claimant was injured in the course and scope of employment on \_\_\_\_\_; that he reached maximum medical improvement on October 1, 1996, with 24% impairment rating; that he commuted no impairment income benefits; and that the qualifying period for the eighth quarter began on August 4, 1999. (The new, 1999 SIBs rules therefore apply.)

Although there was some reference to claimant having been told by a physician that he should not work, there was no dispute at this hearing that claimant could do some work. Claimant provided an Application for Supplemental Income Benefits (TWCC-52) which showed that he made job contacts at least every week during the qualifying period. The hearing officer so found that claimant made a job search every week and the only basis stated as to why that finding is in error is because some jobs listed were said to be outside claimant's restrictions.

Claimant testified that he lives in a small town; he nevertheless looked for work there and also in several small towns nearby and one larger town, also nearby. Claimant said that he regularly made inquiries of various establishments as to whether any jobs may be available and some contacts told him that he had "too may restrictions" for them to give him a job. He pointed out though that he did not look in places with heavy work that he clearly could not do, but in retail or service-type businesses where he might be able to work. At various times in the testimony claimant did question whether he would be able to work, but said that he would try if something were available. He did not make contacts with any business that he knew was not hiring.

Claimant also testified that he has contacted the Texas Workforce Commission (TWC) and filled out an application, but when he showed the TWC employee his restrictions, he was told that nothing was open; the TWC representative implied that if something became available claimant would be contacted. Claimant also said that he had a few head of cattle, including 15 cows, some heifers and some calves--plus one bull; he has had cattle since before his injury. A grandson, along with some friends, help by doing the physical work while claimant sees to it that it gets done. While the cattle business was discussed in some detail, it was not the basis for determining that SIBs were due.

The SIBs rules in effect during the qualifying period (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 130.102(d)(4) and (e) (Rule 130.102(d)(4) and (e)) provide that a claimant shall "look for employment commensurate with his or her ability to work every week of the qualifying period." The evidence clearly shows that claimant "looked" every week; it was for the hearing officer to decide whether he did so commensurate with his ability. The hearing officer's Discussion points out that claimant's home is in a rural area where "opportunities are limited"; that observation was sufficiently supported by the evidence; claimant's testimony could be reasonably interpreted to say that he inquired at businesses likely to have sedentary-type work, if they had any work available, and he did not look for work where he knew there was no work to be had. The hearing officer extensively questioned claimant as to his job contacts and his manner of looking for work. The determination that claimant looked for work commensurate with his ability every week of the qualifying period is sufficiently supported by the evidence. The appeal does not assert that such contacts were not documented; and there is no requirement that a certain number of applications be made relative to a certain number of job contacts, although the hearing officer is to consider applications made as set forth by Rule 130.102(e)(1) to (10).

With claimant having documented that he looked for work every week of the period, added points made by carrier such as the type of jobs sought and amount of time spent in doing so are clearly set forth in Rule 130.102(e) as matters which are to be considered, not that a certain level of accomplishment or effort must be shown in one or more of the 10 points listed for consideration. These points were raised at the hearing, and the hearing officer examined claimant as to the type of jobs he sought and the efforts he made in regard to the TWC. The hearing officer's determination that claimant made a good faith effort to find work is supported by findings of fact that address the requirements of the 1989 Act and the applicable rules; while it would be appropriate to address points, found in Rule 130.102(e)(1) to (10), that were in issue at the hearing in findings of fact, the factual determination which resulted is sufficiently supported by the evidence.

Finding that the decision and order are sufficiently supported by the evidence, we affirm. See In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Joe Sebesta  
Appeals Judge

CONCUR:

Philip F. O'Neill  
Appeals Judge

Thomas A. Knapp  
Appeals Judge