

## APPEAL NO. 000613

This appeal arises pursuant to the Texas Workers= Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 28, 2000. The issue at the CCH was whether the appellant (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter. The hearing officer determined that the claimant did not attempt in good faith to find employment commensurate with his ability to work and is not entitled to SIBs for the fourth quarter. The claimant appeals, requesting that we reverse the hearing officer=s decision and render a decision in his favor. The respondent (carrier) responds, urging affirmance.

### DECISION

Affirmed.

The claimant sustained a compensable injury to his back, neck, knee and chest on \_\_\_\_\_, when he fell while working as a carpenter. The parties stipulated that the claimant=s impairment rating is 16%; that the claimant did not elect to commute any portion of the impairment income benefits; and that the fourth quarter began on November 25, 1999, and will continue through February 23, 2000. Given the dates of the quarter, the qualifying period was from August 13, 1999, through November 11, 1999. The claimant=s treating doctor is Dr. L, who has diagnosed acute cervical, thoracic, lumbar and rib sprain, lumbar disc syndrome, and sciatica. The claimant is 65 years old and has a limited education. The claimant testified that during the qualifying period he searched for 45 jobs within the restrictions of Dr. L, but none of the employers were hiring. According to the claimant, he followed job leads given to him by the carrier and cold-called employers, many of whom he had previously contacted, in an effort to obtain employment.

Dr. L=s records indicate that the claimant is restricted to sedentary or light work with no lifting greater than 10 pounds, and is limited in the number of hours he can stand, walk, sit and drive. A functional capacity evaluation was completed on October 27, 1999. The evaluator indicated that the claimant exhibited symptom exaggeration, inappropriate illness behavior, submaximal effort during testing, and that his true capacities can only be left to conjecture.@

The claimant testified that he sought employment at all of the places listed on the Application for Supplemental Income Benefits (TWCC-52). The claimant admitted that the when he filed the TWCC-52 with the carrier, it did not contain a page documenting his contacts from August 14, 1999, through August 31, 1999. The claimant said that he had forgotten the page, and later provided it to the carrier at the benefit review conference.

Sections 408.142 and 408.143 provide that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment and (2) has in good faith sought employment commensurate with his or her ability

to work. The only issue in this case is whether the claimant made the required good faith job search effort. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 130.102(d)(4) (Rule 130.102(d)(4)), the version then in effect, provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee "has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment." Subsection (e) further provides that the injured worker who "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." There follows a list of information that may be provided by the injured worker and considered on the question of a good faith job search.

The claimant had the burden to prove that he made a good faith effort to seek employment commensurate with his ability to work during the qualifying period. Texas Workers' Compensation Commission Appeal No. 941490, decided December 19, 1994. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). In order to determine whether the evidence presented was sufficient to meet the criteria of Rule 130.102(d)(4), the hearing officer had to judge the credibility of the evidence before him. The hearing officer considered all of the evidence and found that during the qualifying period the claimant made random calls on employers and none of the employers were hiring; that the claimant had no job search plan other than to make random employer contacts; that the claimant's application for the fourth quarter was incomplete and he provided insufficient documentation to show that he made a good faith effort to find employment; and that the claimant did not attempt in good faith to find employment commensurate with his ability to work. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. Applying this standard of review to the record of this case, we find the evidence sufficient to support the hearing officer's determinations that the claimant did not attempt in good faith to find employment commensurate with his ability to work and is not entitled to SIBs for the fourth quarter.

The decision and order of the hearing officer are affirmed.

Dorian E. Ramirez  
Appeals Judge

CONCUR:

Susan M. Kelley  
Appeals Judge

Elaine M. Chaney  
Appeals Judge