

## APPEAL NO. 000644

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 February 28, 2000. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 10th quarter. The claimant appeals, expressing his disagreement with this determination. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

### DECISION

Affirmed.

The claimant, a pipefitter, sustained a compensable low back injury on \_\_\_\_\_, for which he was assigned a 16% impairment rating. 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. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 130.102(b) (Rule 130.102(b)), the quarterly entitlement to SIBs is determined prospectively and depends on whether the employee meets the criteria during the "qualifying period." Under Rule 130.101, the qualifying period ends on the 14th day before the beginning date of the SIBs quarter and consists of the 13 previous consecutive weeks. The 10th quarter was from November 17, 1999, to February 15, 2000, and the qualifying period was from August 4 to November 2, 1999.

At issue in this case is whether the claimant made the required good faith job search commensurate with his ability to work.<sup>1</sup> He originally submitted an Application for [SIBs] (TWCC-52) for this quarter in which he listed no job contacts at all and attached a letter from his doctor which contained his employment restrictions. He said he did this because he had no time to fill out the TWCC-52 with all his job searches. At the benefit review conference he produced a second TWCC-52 for this quarter in which he listed some 55 job contacts. He testified that he looked in two local newspapers, which had very few job listings, and that there was essentially no employment in the town where he lived. His job search, he said, typically consisted of traveling to (city 1) (about 30 miles away) twice a week. There he would check for jobs at his local union hiring hall. In a letter of December 3, 1999, the business agent for the local union wrote that "no work was available within his working capacity per his doctor's restrictions." The claimant testified to essentially the same thing. Nonetheless, some 13 of the 52 job search efforts were at the union hall. He also said that he would visit the Texas Workforce Commission (TWC) for possible job leads, but found none within his restrictions and eventually had difficulty extracting job data from the computer because of a lack of

---

<sup>1</sup>The finding that the claimant's unemployment was a direct result of his impairment has not been appealed.

computer skills. Some 14 of the listed contacts were with the TWC. Seven of the contacts were also with a "manpower" organization. Other contacts were with employers who were not hiring or who did not have jobs within his restrictions. He also listed four contacts with the Texas Rehabilitation Commission (TRC) in an unsuccessful attempt to obtain the assistance of this organization.<sup>2</sup> There was no evidence that the carrier provided the claimant the assistance of a vocational counselor to aid in the job search. The claimant testified that he had essentially been following this unsuccessful job search pattern for about two years.

Whether the claimant made the required good faith job search in this case was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995. In evaluating this question, a hearing officer can consider "the manner in which the job search in undertaken with respect to timing, forethought, and diligence." Texas Workers' Compensation Commission Appeal No. 960268, decided March 27, 1996. We have also observed that good faith is not established simply by some number of job searches. Appeal No. 960268. The hearing officer commented that the job searches outside the union hall, the TWC and "manpower" appeared to be "casual contacts with people he knows," and that the lack of success for two years in the system the claimant had been using reflected a need for a "more structured" job search than he had been using in order to establish a good faith job search. The claimant, in his appeal, disagreed with the characterization of "casual" in regard to his job search and asserts that he truly believed the contacts "might lead to finding a job I could do." He further stated that he did all he "could or knew to do." Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. In this case, the hearing officer simply was not persuaded by the sheer number of job contacts that the claimant was engaged in a good faith effort to obtain employment. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support this determination.

---

<sup>2</sup>Apparently, after the qualifying period, the TRC accepted his application for assistance and then rendered him ineligible.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst  
Appeals Judge

CONCUR:

Susan M. Kelley  
Appeals Judge

Judy L. Stephens  
Appeals Judge