

## APPEAL NO. 000796

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 October 25, 1999. The hearing officer found that the claimant was entitled to first quarter supplemental income benefits (SIBs). The Appeals Panel, in Texas Workers= Compensation Commission Appeal No. 992612, decided January 3, 2000, remanded the case to the hearing officer to apply Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 130.102(d)(4) and (e) (Rule 130.102(d)(4) and (e)), then in effect, to the facts of this case and to make appropriate findings of fact and conclusions of law in light of this rule. A CCH on remand was held on March 28, 2000. The hearing officer again determined that the respondent (claimant) was entitled to SIBs for the first quarter. The appellant (carrier) appealed, contending that the hearing officer again failed to apply the provisions of the cited rule or to make appropriate findings of fact to support his conclusions of law. The appeal file does not contain a response from the claimant.

### DECISION

Reversed and a new decision rendered.

This SIBs case concerns only the issue of whether the claimant made the required good faith job search commensurate with his ability to work. In Appeal No. 992612, *supra*, we pointed out that Rule 130.102(d)(4) and (e) applied in this case. We also stressed, citing Appeals Panel precedent, that findings were to be made on whether the claimant sought work each week of the qualifying period commensurate with his ability to work and whether he documented that job search. This is consistent with other cases wherein we noted the importance of hearing officers=making affirmative findings on the elements contained in these rules. See, e.g., Texas Workers' Compensation Commission Appeal No. 000318, decided March 29, 2000.

In his decision and order on remand, the hearing officer made no express findings of fact that the claimant did or did not perform and document a weekly job search. In his statement of the evidence, the hearing officer wrote that he "believes that the provisions of Rule 130.102 should not control the outcome of this case to the limited extent that the hearing officer finds that the criteria of Rule 130.102 were not met." We interpret this comment to be a statement by the hearing officer that he refused to apply a duly applicable rule adopted by the Commissioners of the Texas Workers' Compensation Commission because he felt this particular case was somehow unique. See Rodriguez v. Service Lloyds Insurance Company, 997 S.W.2d 248 (Tex. 1999). We hold that Rule 130.102 applies to the facts of this case.

Because we have no authority to again remand this case to the hearing officer, we have reviewed the evidence of the claimant's documented job search in the applicable filing period. The claimant's Statement of Employment Status (TWCC-52) contains no listing of job searches. Attached to it was a description of the claimant's situation as he perceived it, but with no job application information. Also in evidence was a statement that he did hauling work

on five days of the qualifying period. There is no other evidence of a documented job search. Based on this record, we determine that the claimant has failed to satisfy the requirements of Rule 130.102(d)(4) and (e) for establishing the required good faith job search and that he is not entitled to first quarter SIBs.

For the foregoing reasons, we reverse the decision and order of the hearing officer and render a decision that the claimant was not entitled to first quarter SIBs.

Alan C. Ernst  
Appeals Judge

CONCUR:

Robert W. Potts  
Appeals Judge

Dorian E. Ramirez  
Appeals Judge