

APPEAL NO. 000818

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 March 23, 2000. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fifth and sixth quarters. The claimant appealed, expressing her disagreement with these determinations. The respondent (self-insured) replied that the decision was correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The claimant sustained a compensable injury on _____. She reached maximum medical improvement on November 10, 1997, and was assigned a 15% 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 depends on whether the employee meets the criteria during the qualifying period. Under Rule 130.101(4), 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 fifth SIBs quarter was from September 21 to December 20, 1999, and the sixth quarter was from December 21, 1999, to March 21, 2000.

The claimant did not assert that she was unable to work in any capacity. She submitted an Application for [SIBs] (TWCC-52) for each quarter in issue together with incomplete job applications and business cards to support her claim for SIBs. The TWCC-52 for the fifth quarter listed some 51 job contacts; for the sixth quarter, the claimant listed some 18 job contacts. Rule 130.102(e) provides that an injured employee "who has not returned to work and 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." We have held that the documentation requirement of Rule 130.102(e) was mandatory and a hearing officer could not consider non-documented employment contacts in arriving at the good faith determination." Texas Workers' Compensation Commission Appeal No. 992321, decided November 22, 1999. The hearing officer commented in her decision and order that the claimant did not document job search efforts during three weeks of the fifth quarter qualifying period and during seven weeks of the sixth quarter qualifying period. For these reasons, she found

that the claimant did not make the required good faith job search effort in either qualifying period and was not entitled to fifth or sixth quarter SIBs. In her appeal of the decision and order, the claimant does not expressly take issue with the findings of no documented job searches during these weeks, but simply states that she made the required good faith effort and cooperated with the carrier-provided vocational counselor.

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 the findings of fact and conclusions of law of the hearing officer.

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

Alan C. Ernst
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

CONCURRING OPINION:

I concur with the result reached by the majority. I write separately merely to state that my views concerning documentation of a job search and Texas Workers' Compensation Commission Appeal No. 992321, decided November 22, 1999, remain unchanged since my dissenting opinion in Texas Workers' Compensation Commission Appeal No. 992460, decided December 22, 1999, in which I express those views at some length. However, in the present case, it does not appear that the claimant's documentation of a job search either through documents or testimony was sufficient to compel reversal of the decision of the hearing officer. I, therefore, agree that the decision of the hearing officer should be affirmed.

Gary L. Kilgore
Appeals Judge