

APPEAL NO. 000881

On April 4, 2000, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The hearing officer resolved the disputed issue by deciding that appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter. Claimant requests that the hearing officer's decision be reversed and that a decision be rendered in his favor. Respondent (carrier) requests affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The new SIBs rules effective January 31, 1999, apply to this case. The parties stipulated that claimant sustained a compensable lower back injury on \_\_\_\_\_; that he reached maximum medical improvement on March 23, 1999, with a 16% impairment rating as certified by Dr. F, the designated doctor; that he did not commute impairment income benefits; that the first quarter was from February 23, 2000, to May 23, 2000; and that the qualifying period for the first quarter was from November 11, 1999, to February 9, 2000. There is no appeal of the hearing officer's finding that claimant's unemployment was a direct result of the impairment from his compensable injury. The SIBs criterion in question is whether claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period. Rule 130.102(b).

Claimant testified that he is in pain, that he takes pain medications, that he has gotten worse over time, that he has not had surgery for his back injury, and that he has been told by his doctor that surgery is not an option. Claimant underwent a functional capacity evaluation (FCE) in March 1999 and the FCE report indicates that claimant can perform in the light-work category. The FCE report states that claimant has not returned to work since his injury of \_\_\_\_\_. Claimant said that he is on a leave of absence from work. Dr. R, claimant's treating doctor, noted in October 1999 that claimant is only able to do light duty. On his Application for SIBs for the first quarter, claimant listed 13 job contacts during the qualifying period, six of those contacts were with the employer with whom he was employed when injured. Claimant also provided some written documentation of contacts with three other employers during the qualifying period.

In the Statement of the Evidence portion of his decision, the hearing officer stated that the evidence indicated that claimant has some limited ability to work. The hearing officer found that claimant made between 13 and 16 documented employment contacts during the qualifying period, that claimant did not spend sufficient time or energy seeking employment during the qualifying period, and that claimant did not make a good faith effort to obtain employment commensurate with his ability to work. The hearing officer concluded

that claimant is not entitled to SIBs for the first quarter. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). Whether claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period was a fact question for the hearing officer to determine from the evidence presented at the CCH. The hearing officer heard claimant's testimony concerning his job search and considered the other evidence and determined that claimant had not made a good faith effort to obtain employment commensurate with his ability to work. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts  
Appeals Judge

CONCUR:

Gary L. Kilgore  
Appeals Judge

Dorian E. Ramirez  
Appeals Judge