

APPEAL NO. 000904

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 April 5, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth or fifth quarter. The claimant appealed, expressing his disagreement with these determinations. The respondent (carrier) replied that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

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. At issue in this case is whether he met the good faith job search requirement as further set out in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The fourth SIBs quarter began on November 6, 1999, and the fifth quarter began on February 18, 2000.

The claimant submitted an Application for [SIBs] (TWCC-52) for each quarter in issue. He listed approximately 27 job contacts for the fourth quarter and 14 job contacts for the fifth quarter. At least one job contact was documented for each week of the qualifying period. The claimant testified that his job search method involved selecting possible employers from the phone book and calling them to see if they had jobs he could do. Each contact was by phone. None offered him a job. He said he was looking for office work, but testified that he had essentially no training in this type of work. He was registered with the Texas Workforce Commission (TWC) and said that his last contact with the TWC was "a long time ago." As to restrictions, he said he only did "little things" around the house. He presented no medical evidence of physical restrictions. The carrier's functional capacity evaluation in evidence indicated the results were invalid based on a perceived lack of effort.

The hearing officer commented that the claimant appeared to be "making the minimal effort to look for work to satisfy, on paper, the requirements of SIBS and he failed to prove he was making a good faith effort to obtain employment [commensurate] with his ability to work." She, therefore, found him not entitled to SIBs for either quarter. In his appeal, the claimant stated that he did make such an effort. Whether he did presented a question of fact for the hearing officer, as fact finder, to resolve. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. 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). Under this standard of review, we find the evidence sufficient to support these determinations.

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