

APPEAL NO. 001013

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 14, 2000. With regard to the issues before him, the hearing officer determined that the appellant (claimant) had some ability to work but did not make a good faith effort to find work commensurate with her ability to work and is not entitled to supplemental income benefits (SIBs) for the 19th and 20th quarters. The claimant appealed, contending that although she did not look for work during some portions of the periods due to hospitalization or medical treatment for illness unrelated to the compensable injury, she did look for work commensurate with her ability to work. Claimant appealed each and every adverse determination and requests that we reverse the hearing officer's decision and render a decision in her favor. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed.

Claimant had been employed in some capacity by the self-insured school district and sustained a low back injury on _____. Medical records indicate claimant sustained a lumbosacral strain when she "slipped in a shower." Claimant has been treated with conservative treatment. The parties stipulated that claimant sustained a compensable injury on _____; that claimant has a 24% impairment rating (IR); that impairment income benefits (IIBs) have not been commuted; and that the qualifying period for the 19th quarter was from September 11 through December 10, 1999, with the qualifying period for the 20th quarter being from December 11, 1999, through March 10, 2000.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBs when the IIBs period expires if the employee has: (1) an IR of at least 15%; (2) not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; (3) not elected to commute a portion of the IIBs; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work. At issue in this case is subsection (4), whether claimant made the requisite good faith effort to obtain employment commensurate with her ability to work. There is no appeal of the hearing officer's finding that claimant's unemployment during the qualifying period was a direct result of her impairment.

At issue in this case is whether claimant's job search efforts amounted to a good faith effort to obtain employment commensurate with her ability. Claimant's restrictions are no lifting more than 10 pounds; no stooping, kneeling or squatting; and only limited walking and standing. Claimant testified through a translator that she does not read, write or speak English and has only a limited education in Mexico. Claimant also testified, and the limited medical records support, that she has numerous other non work-related problems such as required kidney dialysis three times a week, a heart condition and a problem with her lungs.

Claimant testified that she was in and out of the hospital a number of times during the qualifying periods but was unable to give any specific dates. Claimant has been released to light duty, with the restrictions previously noted, for four hours a day.

Claimant's Application for [SIBs] (TWCC-52) for the 19th quarter contains 13 job contacts during the qualifying period (two contacts fall outside the qualifying period), with at least two weeks without any contacts. The TWCC-52 for the 20th quarter has listed some 19 contacts but many do not have a specific date and others have a date which falls after the date that the TWCC-52 was filed. When questioned about these discrepancies, claimant admitted that the documentation was incorrect. Claimant testified that many of her job contacts were by telephone and apparently no actual applications were completed.

The standard of what constitutes a good faith effort to obtain employment in SIBs cases was specifically defined and addressed after January 31, 1999, in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)). Rule 130.102(e) provides, in pertinent part, that:

an injured employee who has not returned to work and is able 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.

The hearing officer, in his Statement of the Evidence, commented:

The current rules for [SIBs] require that a claimant look for work every week, unless the claimant is unable to work. Since [claimant] did not document which weeks she was unable to search for work due to her health, she must document job searches every week, and both Applications fall short of that requirement. Eighteen job contacts were noted during the 20th quarter qualifying period, an average of over one per week, but dates were not properly entered. Because of Claimant's methodology in noting job contacts, it appears that her intent was to qualify for [SIBs], and not to find a job.

The hearing officer found that claimant did not make a good faith effort to find work commensurate with her ability. Claimant, in her appeal, simply argues that she did not look for work during some portions of the qualifying periods because of her hospitalization and treatment for other illnesses. However, as we noted, there was no attempt made to document those periods of time or even to adequately document her job search efforts.

We find the hearing officer's decision supported by 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). Applying this standard of review to the record of this case, we decline to substitute our opinion for that of the hearing officer.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge