

APPEAL NO. 001027

On April 11, 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.* The hearing officer resolved the disputed issue by deciding that appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the seventh quarter. Claimant requests that the hearing officer's decision be reversed and that a decision be rendered in his favor. Respondent (carrier) requests that the hearing officer's decision be affirmed.

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 parties stipulated that claimant sustained a compensable injury on _____; that claimant reached maximum medical improvement with an impairment rating of 15% or greater; that claimant did not commute impairment income benefits; that the seventh quarter was from January 5 to April 4, 2000; and that the qualifying period for the seventh quarter was from September 23 to December 22, 1999. There is no appeal of the hearing officer's finding that claimant's unemployment during the qualifying period was a direct result of his compensable injury. The SIBs criterion in dispute is whether claimant attempted in good faith to obtain employment commensurate with his ability to work during the qualifying period. Section 408.142(a)(4); Rule 130.102(b)(2). Claimant contends that the hearing officer erred in finding that he did not make a good faith job search commensurate with his ability to work during the qualifying period. It is not disputed that during the qualifying period claimant had an ability to work light duty.

During the qualifying period, Rule 130.102(e) provided in part that, except as provided in subsections (d)(1), (2), and (3) of Rule 130.102, 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. That subsection also provides that information that may be considered includes, among other things, cooperation with the Texas Rehabilitation Commission (TRC).

Claimant testified that he was working as a pipe fitter helper on _____, when he injured his neck, back, and left shoulder. Claimant had cervical spine surgery in 1996 and left shoulder surgery in 1997. On his Application for SIBs (TWCC-52) for the seventh quarter, claimant listed a total of 20 job contacts and noted that those contacts were made on five days. No employment contacts are listed during November 1999. His TWCC-52 for the sixth quarter lists two job contacts that were made on September 23, 1999, which was the first day of the qualifying period for the seventh quarter. Claimant testified that he looked for work during every week of the qualifying period but that he did not document his

job search every week. He said that he did not document the follow-up calls and visits to employers he applied to in previous quarters. Claimant was in contact with the TRC and carrier's vocational case manager during the qualifying period, but he was not enrolled in a vocational rehabilitation program.

The hearing officer found that the majority of claimant's job search was not documented, that claimant did not seek work each week of the qualifying period, and that claimant did not make a good faith effort to search for employment commensurate with his ability to work during the qualifying period. The hearing officer concluded that claimant is not entitled to SIBs for the seventh quarter. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision that claimant is not entitled to SIBs for the seventh quarter 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:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge