

APPEAL NO. 001324

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 May 16, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter. The claimant appealed, contending that the hearing officer's good faith determination is incorrect and that she is entitled to SIBs. The respondent (carrier) responded that the appeals panel should affirm the hearing officer's decision and order. The direct result determination in claimant's favor was not appealed.

DECISION

We affirm.

Claimant contends that the hearing officer erred in determining that she is not entitled to SIBs. She asserts that: (1) she had no ability to work before she began her job search on December 13, 1999, because of her July 9, 1999, knee surgery; (2) her doctor did not release her until December 9, 1999, which was on a Thursday, near the end of the workweek; (3) she made a good faith effort because her job search began at the beginning of the next workweek after she was released to return to work; and (4) she could not look for work on the weekend before December 13, 1999, because hiring personnel are not there over the weekend.

The version of Rule 130.102(e) (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e)) in effect at the time if the qualifying periods in this case provides in part.

(e) Job Search Efforts and Evaluation of Good Faith Effort. Except as provided in subsection (d)(1), (2), (3), and (4) of this section, 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.

In the case before us, claimant did not meet any of the provisions of subsection (d)(1), (2), (3), and (4) of Rule 130.102, so she had to look for work every week of the qualifying period. The parties stipulated that the qualifying period began Wednesday, December 1, 1999, and ended February 29, 2000. Claimant said she first sought employment on Monday, December 13, 1999. There was no evidence that, from December 1, 1999, to December 12, 1999, claimant looked in the newspaper, worked with the Texas Workforce Commission, or otherwise searched for work. No matter what day of the week is used to start counting weeks, there is a period of more than a week, from December 1, 1999, to December 12, 1999, when claimant did not seek employment as required by the provisions of Rule 130.102(e). See Texas Workers' Compensation Commission Appeal No. 992321, decided November 22, 1999.

Claimant asserted that she had no ability to work before she was released to work on December 9, 1999. However, in his decision, the hearing officer indicated that claimant had some ability to work during the qualifying period, although she was restricted to part-time, sedentary work. To prove that she had no ability to work from December 1, 1999, to December 12, 1999, claimant was required to provide a "narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work." Rule 130.102(d)(4). No such narrative contained in the record.

Claimant had some ability to work during the qualifying period but she did not look for work every week of the qualifying period. Therefore, the hearing officer did not err in determining that she did not make a good faith effort to find work commensurate with her ability to work. The hearing officer's determinations regarding good faith and SIBs are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge