

APPEAL NO. 001373

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 9, 2000. The appellant (carrier) and the respondent (claimant) stipulated the 10th quarter for supplemental income benefits (SIBs) began on October 17, 1999, and continued through January 15, 2000, and that the 11th quarter began on January 16, 2000, and continued through April 16, 2000. The hearing officer determined that the claimant is entitled to SIBs for the 10th and 11th quarters. The carrier appealed, contended that the claimant did not prove that she looked for work each week of the qualifying periods and documented a job search each week as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e)(Rule 130.102(e)), and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant is not entitled to SIBs for the 10th and 11th quarters. A response from the claimant has not been received.

DECISION

We reverse the decision of the hearing officer and render a decision that the claimant is not entitled to SIBs for the 10th and 11th quarters.

The Application for [SIBs] (TWCC-52) for the 10th quarter and three pages attached to it indicate that the claimant made 14 job contacts during the qualifying period. The TWCC-52 shows that two contacts were made on August 5, 1999, and that single contacts were made on August 13, 17, 18, and 19, 1999. The dates of contact for eight job contacts are not shown on the TWCC-52.

The TWCC-52 for the 11th quarter has a copy of the three pages with 14 job contacts that were attached to the TWCC-52 for the 10th quarter. Also attached to the TWCC-52 for the 11th quarter are four other pages with twenty-seven other contacts named. The attachments show that three contacts were made on December 9, 1999, and two contacts were made on December 10, 1999. The dates of contacts for twenty-two employers named in the attachments are not provided.

The claimant testified that someone working for the carrier provided her with lists of places where she should look for work and that soon after she received a list her son would take her to those places and she would ask if they had work for her. She said that she filled out some applications. She said that she also found some places to look when she was not sent a list. She stated that her attorney had copies of applications but that she did not have another list of places where she went to look for work.

Rule 130.102(e) provides in part:

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.

The hearing officer made the following findings of fact related to Rule 130.102(e):

12. During the qualifying period for the 10th quarter, the vocational specialist for the Carrier was unable to find a single employer willing to hire Claimant.

13. During the qualifying period for the 10th quarter, Claimant contacted employers soon after the employers were identified by the Carrier's vocational specialist and she did not look for work each week of the qualifying period as there were a few weeks where no employers had been identified.

20. During the qualifying period for the 11th quarter, Claimant's plan to find employment was to promptly contact all employers identified for the Carrier's vocational specialist and to cooperate with the vocational specialist.

21. Claimant was prepared to contact an employer each week of the qualifying period, but since neither the Claimant nor the Carrier's vocational specialist could identify a possible employer, she did not contact an employer each week of the qualifying period.

The hearing officer concluded that during the qualifying periods the claimant did attempt in good faith to find employment commensurate with her ability to work and that she is entitled to SIBs for the 10th and 11th quarters.

The hearing officer made findings of fact that the claimant did not look for employment each week of the qualifying period for the 10th quarter and that she did not contact an employer each week of the qualifying period for the 11th quarter. Rule 130.102(e) does not contain any exceptions to the requirement to "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 rule does not make the job search contingent on the carrier identifying potential employers for the claimant to contact. The evidence does not establish that during the qualifying periods for the 10th and 11th quarters for SIBs the claimant met the requirements of Rule 130.102(e). The claimant did not contend that she met the good faith requirement by complying with any of the provisions of Rule 130.102(d)(1), (2), (3), or (4).

We reverse the decision of the hearing officer and render a decision that the claimant is not entitled to SIBs for the 10th and 11th quarters.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Kathleen C. Decker
Appeals Judge