

APPEAL NO. 001483
FILED AUGUST 9, 2000

On May 23, 2000, a contested case hearing (CCH) was held in _____, Texas, with _____ presiding as the hearing officer. 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 issues by deciding that respondent (claimant) is entitled to supplemental income benefits (SIBs) for the third and fourth quarters. Appellant (carrier) requests that the hearing officer's decision be reversed and that a decision be rendered in its favor. Claimant 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). Claimant testified that she injured her back while working on _____. The parties stipulated that claimant sustained a compensable injury on _____; that she has an impairment rating (IR) of 15% or more; that she did not commute impairment income benefits (IIBs); that the third quarter was from September 17, 1999, to December 16, 1999; and that the fourth quarter was from December 17, 1999, to March 16, 2000. The qualifying period for the third quarter was from June 5, 1999, to September 3, 1999, and the qualifying period for the fourth quarter was from September 4, 1999, to December 3, 1999.

(Dr. H), claimant's treating doctor, noted in December 1998 that claimant has a 10-pound lifting restriction and restrictions on the amount of walking, standing, sitting, stooping, and kneeling claimant can do. Claimant testified that she was still under work restrictions during the qualifying period.

Claimant's Application for SIBs (TWCC-52) for the third quarter documents approximately 100 job contacts throughout the qualifying period for that quarter and her TWCC-52 for the fourth quarter documents approximately 50 job contacts throughout the qualifying period for that quarter. Claimant said that she has 20 years experience as a manager or assistant manager of apartment complexes, that she has one year's experience as a process server, and that she has two or three year's experience as a beautician, although her beautician's license has expired. Claimant's job search documentation reflects that she contacted employers in person, by telephone, by letter, and by facsimile transmission. She said that she gave or sent her resume to employers and made some applications. Her documentation reflects that she contacted employers about various positions, including assistant apartment manager, customer service representative, sales representative, cashier, receptionist, bookkeeper, and clerical worker. Many of the jobs listed are for an assistant apartment

manager. Carrier's exhibits reflect that carrier was unable to verify many of claimant's job contacts for various reasons.

Rule 130.102(b) provides that an injured employee who has an IR of 15% or greater, and who has not commuted any IIBs, is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage (AWW) as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work. Rule 130.102(c) provides that an injured employee has earned less than 80% of the employee's AWW as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings. Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3), and (4) 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.

The hearing officer found that during the qualifying periods for the third and fourth quarters, claimant's inability to earn 80% of her AWW was a direct result of her impairment from the compensable injury and that claimant made a good faith effort to obtain employment commensurate with her ability to work. The hearing officer concluded that claimant is entitled to SIBs for the third and fourth quarters. Carrier appeals the hearing officer's findings and conclusions, contending that claimant did not apply for all the positions listed on her TWCC-52s, that there were no job openings at most of the places claimant sent her resume, that claimant was not credible, and that claimant self-limited her job search to apartment manager jobs.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves conflicts in the evidence. We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge