

APPEAL NO. 001517

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was originally held on January 13, 2000. The issue in that case was entitlement to supplemental income benefits (SIBs) for the second quarter and whether the respondent's (claimant) job search efforts met the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) and (e) (Rule 130.102(d) and (e)). The Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 000364, decided April 6, 2000, remanded the case back to the hearing officer with instruction to "make findings regarding which weeks after July 12th [1999] claimant worked for Ms. OS[,] . . . make specific findings referencing Rule 130.102" and "make findings regarding the questions raised in the concurring decision." A hearing on remand was scheduled for May 4, 2000; however, the hearing was not held since the hearing officer determined that no additional hearing was needed. The hearing officer on remand again determined that the claimant is entitled to SIBs for the second quarter, from October 5, 1999, through January 3, 2000. The appellant (carrier) appealed, contending that the hearing officer did not adequately respond to the Appeals Panel remand, that the claimant had been unable to provide with any degree of specificity what dates she worked, saw her health care provider or contacted the Texas Rehabilitation Commission (TRC). The carrier requests that we reverse the hearing officer's decision and render a decision in its favor. The claimant responds, urging affirmance.

DECISION

Affirmed.

Appeal No. 000364, *supra*, sets out the background facts, statutory requirements, and a brief recitation of the facts which will not be repeated here other than to note that the claimant, who had previously been a "paramedic" and during the qualifying period of June 22 to September 30, 1999, had some temporary part-time employment with Ms. OS. The claimant also worked for about three days on August 10 through 12, 1999, during the qualifying period as a respite care giver for another employer. Otherwise, the claimant, who admitted her record keeping and bookkeeping skills were "not good," was very vague on dates that she actually worked, and/or dates that she saw her health care provider. We remanded for the hearing officer to make more specific findings, particularly in view of that portion of Rule 130.102(e) which requires the claimant to look for employment commensurate with her ability to work "every week of the qualifying period and document his or her job search efforts." The concurring opinions in Appeal No. 000364, *supra*, held that if an employee has returned to work during the qualifying period there is no need to look for other employment during that week and that:

if on remand, the hearing officer finds that the claimant either worked or looked for work in each week of the qualifying period, then she can further determined that the claimant has satisfied the good faith requirement in this

case, even if there are weeks in the qualifying period where the claimant "did not look for work."

The hearing officer's decision in this case is almost exactly the same as in Appeal No. 000364 with the exception that the hearing officer states that the claimant looked for "15 jobs" instead of 17 as stated in Appeal No. 000364 (after we pointed out two of the job contacts were prior to the qualifying period) and Findings of Fact No. 3 and 4 which were changed to read:

FINDINGS OF FACT

3. During the second quarter qualifying period, Claimant searched for about 15 jobs. Claimant either worked or looked for work in each week of the second quarter qualifying period.
4. As a result of Claimant's search efforts she obtained two jobs that she performed during the 2nd quarter qualifying period. The job with [Ms. OS] was part time temporary, but lasted from July 12, 1999 through the end of the second quarter qualifying period. The job with [Ms. C] lasted from August 10, 1999 through August 12, 1999. Claimant established that the duties she performed for [Ms. OS] and [Ms. C] as a care giver were equal to her abilities to work.

In light of the language in the concurring opinion, the hearing officer found that the claimant "either worked or looked for work in each week of the qualifying period," even without much evidence to support that finding. We are constrained to hold that finding not to be so against the great weight and preponderance of the evidence as to be manifestly unjust or clearly wrong. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Judy L. Stephens
Appeals Judge