

APPEAL NO. 001603

On June 21, 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 the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the eighth quarter. The claimant requests that the hearing officer's decision be reversed and that a decision be rendered in her favor. The respondent (self-insured) 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). Rule 130.102(b) provides that an injured employee who has an impairment rating (IR) of 15% or greater, and who has not commuted any impairment income benefits (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 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(e) provides that, except as provided in subsections (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 claimant testified that she injured her back and neck at work on _____. The parties stipulated that the claimant sustained a compensable injury on _____; that the claimant reached maximum medical improvement on August 19, 1997, with a 16% IR; that the claimant did not commute IIBs; that the eighth quarter was from April 19, 2000, to July 18, 2000; that the qualifying period for the eighth quarter was from January 5, 2000, to April 4, 2000 (the qualifying period); and that the claimant had no earnings during the qualifying period. There is no appeal of the hearing officer's finding that the claimant's unemployment during the qualifying period was a direct result of her impairment. The SIBs criterion in dispute is whether the claimant attempted in good faith to obtain employment commensurate with her ability to work during the qualifying period.

The claimant said that she was told by her treating doctor, Dr. W, to look for light-duty work and that Dr. W did not feel that she could work 40 hours a week. The claimant listed 29 job contacts on her Application for SIBs (TWCC-52) for the eighth quarter and said that many of the job contacts came from the carrier's case manager, CS. WC, the claimant's friend, said that she went with the claimant when the claimant would go in person to inquire about a job and that the claimant would take a job application home with her. CS said that only four employers listed on the TWCC-52 could confirm that the

claimant actually applied for a job. The claimant said that on April 14, 2000, which was after the qualifying period ended, she began working for her husband in a paint and body shop doing light-duty work.

The hearing officer found that the claimant did not make a good faith effort to seek employment commensurate with her ability to work during the qualifying period and concluded that the claimant is not entitled to SIBs for the eighth quarter. 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 decision 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. To the extent that the claimant's appeal may question the hearing officer's rulings excluding some of her exhibits, we do not find that the hearing officer erred in excluding those exhibits based on his determinations that the claimant did not timely exchange the exhibits with the carrier and that the claimant did not have good cause for failing to timely exchange the exhibits. Rule 142.13.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge