

APPEAL NO. 001767

On July 12, 2000, a contested case hearing (CCH) was held in Harlingen, Texas, with Robert M. Richards 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 issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 12th quarter. The claimant requests that the hearing officer's decision be reversed and that a decision be rendered in his favor. The respondent (carrier) 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, 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(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided 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)(5) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has provided sufficient documentation as described in subsection (e) of Rule 130.102 to show that he or she has made a good faith effort to obtain employment. Rule 130.102(e) provides, in part, 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.

There is no appeal of the hearing officer's findings that the claimant's unemployment during the qualifying period was a direct result of his impairment from his compensable injury and that the claimant had some ability to work during the qualifying period. The SIBs criterion in dispute is whether the claimant attempted in good faith to obtain employment commensurate with his ability to work during the qualifying period. Section 408.142(a)(4); Rule 130.102(b)(2).

The parties stipulated that on _____, the claimant sustained a compensable injury to his left shoulder and low back; that the claimant has a 15% IR; and that the qualifying period for the 12th quarter was from January 14, 2000, to April 13, 2000 (the qualifying period). The 12th quarter was from April 27, 2000, to July 26, 2000.

The claimant testified that Dr. P is his treating doctor; that he had lumbar surgery in September 1995; that Dr. P has not released him to return to work; that Dr. N, the doctor he saw at the request of the carrier, has stated that he has work restrictions; that he looked for work during the qualifying period within his work restrictions; that he would work if he was offered a job within his restrictions; and that he obtained job leads from the Texas Workforce Commission (TWC), from an employment company, through looking at help-wanted advertising, and by going to places and asking if they had work available.

Dr. N evaluated the claimant at the request of the carrier in September 1998 and reported that the claimant may return to light duty after being retrained. Dr. N noted that there are multiple jobs that the claimant could do. Dr. P wrote in April 2000 that the claimant remains totally disabled and unable to return to any type of gainful employment. Dr. P wrote in June 2000 that the claimant had a lumbar laminectomy, fusion, and implantation of a bone stimulator in September 1995 and that the claimant has not been able to return to gainful employment because of his ongoing condition, which he described as low back pain, occasional tingling in the left lower extremity, severe spastic paravertebral muscles, and decreased range of motion.

On his Application for SIBs (TWCC-52) for the 12th quarter, the claimant listed 20 job contacts, two of which were with the TWC, and noted that he had filed nine job applications. The claimant listed no job search effort with the TWC, employers, or otherwise, for the third week of the qualifying period. An employment counselor hired by the carrier obtained statements from three of the employers listed on the TWCC-52 that the claimant had not contacted them.

The claimant appeals the hearing officer's findings that the claimant did not seek employment during the third week of the qualifying period and that during the qualifying period the claimant did not attempt in good faith to obtain employment commensurate with his ability to work. The claimant also appeals the hearing officer's conclusion that the claimant is not entitled to SIBs for the 12th quarter.

Whether the claimant attempted in good faith to obtain employment commensurate with his ability to work during the qualifying period was a question of fact to be determined by the hearing officer from the evidence presented. 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. The hearing officer was apparently not persuaded that the claimant was attempting in good faith to obtain employment commensurate with his ability to work. 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.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge