

## APPEAL NO. 001870

On July 18, 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 issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third and fourth quarters. The claimant appeals the hearing officer's decision and requests that a decision be rendered in her 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 (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(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(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 finding that the claimant's unemployment during the qualifying periods for the third and fourth quarters 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 periods. Section 408.142(a)(4); Rule 130.102(b)(2).

The parties stipulated that the claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome (CTS), bilateral ulnar nerve neuritis, and thoracic outlet syndrome; that the claimant did not commute IIBs; that the claimant reached maximum medical improvement on January 2, 1998, with a 27% IR; that the third quarter was from January 22, 2000, to April 21, 2000, with a qualifying period of October 10, 1999, to

January 8, 2000; and that the fourth quarter was from April 22, 2000, to July 21, 2000, with a qualifying period of January 9, 2000, to April 8, 2000.

The claimant was working as a dental assistant when she sustained her compensable injury. She said that in \_\_\_\_\_ or \_\_\_\_\_ she had left and right carpal tunnel releases and ulnar nerve surgery on the right. Dr. B, the claimant's treating doctor, indicated in a report dated November 17, 1999, that the claimant could function as a greeter or receptionist with certain restrictions.

The claimant listed 38 job contacts in her Application for Supplemental Income Benefits (TWCC-52) for the third quarter and 102 job contacts in her TWCC-52 for the fourth quarter. The first documented job contact in the qualifying period for the third quarter was on December 2, 1999, which was about seven weeks into the qualifying period. The claimant documented job contacts in each week of the qualifying period for the fourth quarter. The claimant said that two or three times a week she would spend 45 minutes to an hour looking for work; that she would look for work in the Sunday newspaper and would look for help wanted signs; that most of her job contacts were made by faxing her resume to potential employers; that the cover letter she sent with her resume advised the potential employer that she has bilateral CTS and thoracic outlet syndrome; that she looked for work as a receptionist or greeter; and that at the end of May 2000, which was about seven weeks after the end of the qualifying period for the fourth quarter, she obtained a part-time job as a receptionist.

The hearing officer stated in her decision that the claimant had not established that she had a total inability to work in any capacity during the qualifying periods and that the claimant did not establish that she searched in good faith for employment during the qualifying periods. The hearing officer stated that the claimant was simply doing what she thought was necessary to qualify for SIBs. The hearing officer found that the claimant failed to establish that she was unable to perform any work at all during the qualifying periods and that during the qualifying periods the claimant did not make a good faith effort to seek employment. The hearing officer concluded that the claimant is not entitled to SIBs for the third and fourth quarters. The evidence reflects that the claimant spent a very limited amount of time looking for work, which is one of several factors that is to be considered in determining whether a good faith effort was made. Rule 130.102(e). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Kathleen C. Decker  
Appeals Judge

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Susan M. Kelley  
Appeals Judge