

APPEAL NO. 002042

On August 7, 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. § 401.01 *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 third 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 (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 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 period for the third quarter was a direct result of his impairment from the compensable injury. 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).

It is undisputed that the claimant sustained a compensable back injury on _____. He had lumbar spine surgery in late 1998 or early 1999. It is undisputed that the claimant had some ability to work during the qualifying period. The claimant said that his treating doctor, Dr. G, told him that his work restrictions are no pushing, pulling, or carrying over 20 pounds.

The third quarter was from March 10, 2000, to June 8, 2000, with a qualifying period from November 27, 1999, to February 25, 2000. The parties stipulated that the claimant has at least a 15% IR and that he did not commute IIBs.

The claimant testified that during the qualifying period he looked for employment, he did not find employment, and he was not employed. The claimant testified that during the qualifying period he would go to businesses and ask if they were hiring and that, if they were hiring, he would fill out an employment application. He said he listed his employment contacts on his Application for SIBs (TWCC-52) for the third quarter. The claimant said that during the qualifying period he was registered with the Texas Workforce Commission (TWC) and the Texas Rehabilitation Commission (TRC). He said that a person connected with the carrier would send him job leads from the TWC but that he did not apply for those jobs because those employers would not hire him because of his felony record. He said that the TRC told him that they could not help him until Dr. G gave him a full release.

The claimant listed 90 employment contacts on his TWCC-52 for the third quarter. Numerous contacts are listed twice, and some are listed three times. Jobs applied for were cook, stocker, cashier, and salesperson. The claimant said that he has no experience as a cook, cashier, or salesperson but that he would train for those jobs.

The hearing officer found that during the qualifying period for the third quarter, the claimant did not make a good faith effort to seek employment and the hearing officer concluded that the claimant is not entitled to SIBs for the third quarter. The claimant asserts that he did look for employment that he thought he could do.

Whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period was a fact question for the hearing officer to determine from the evidence presented. The Appeals Panel has noted that in determining whether a claimant has attempted in good faith to obtain employment commensurate with his ability to work, the hearing officer must sometimes assess whether undeniable contacts made with prospective employers constitute a true search to reenter employment or are done instead in a spirit of meeting, on paper, eligibility requirements for SIBs. Texas Workers' Compensation Commission Appeal No. 960252, decided March 20, 1996. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer makes clear in his decision that he was not persuaded that the claimant made a good faith effort to seek employment or that the job search was reasonably calculated to result in success. 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

Thomas A. Knapp
Appeals Judge