

APPEAL NO. 002079

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 held on August 23, 2000. With regard to the only issue before her, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fifth compensable quarter.

The claimant "appeals each and every finding of fact and conclusion of law" adverse to the claimant and requests that we reverse the hearing officer's decision. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBs when the impairment income benefits (IIBs) period expires if the employee has: (1) an impairment rating (IR) of at least 15%; (2) not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; (3) not elected to commute a portion of the IIBs; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work. At issue in this case is subsection (4), whether the claimant made the requisite good faith effort to obtain employment commensurate with his ability to work. The hearing officer's finding in favor of the claimant on direct result has not been appealed and will not be addressed further.

The parties stipulated that the claimant sustained a compensable (left knee) injury on _____; that the claimant has a 16% IR; and that IIBs have not been commuted; and the parties agreed that the qualifying period for the fifth quarter was from January 15 through April 4, 2000. The claimant testified that his treating doctor, Dr. M, told him "don't come with me anymore" but that he continues to have pain in his low back and left leg and that he has restrictions of "no heavy lifting and no climbing or bending." The evidence supports that the claimant has the ability to work light to medium work based on a 1997 functional capacity evaluation (FCE). The claimant testified that he did not know if he could do the work that he applied for. The claimant explained that his job search efforts included going to a business at random and asking "what type of jobs do you have?"

The claimant contends that he made a good faith job search in the qualifying period for the fifth quarter. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)) provides in relevant part that "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." In this case, the claimant's Application for Supplemental Income Benefits (TWCC-52) does not reflect that the claimant made any job contacts in the period from January 15 to January 30, 2000, and the hearing officer found that the claimant did not document a job search effort every week of the qualifying period. The claimant testified

as to his job search efforts in that period; however, the hearing officer was not bound to accept that testimony. The hearing officer further made findings that the claimant "did not conduct a well structured job search plan" and that the claimant's 32 job contacts resulted in no interviews or job offers. The hearing officer obviously considered the factors listed in Rule 130.102(e)(1) to (10) in evaluating the claimant's job search efforts.

The hearing officer's determination that the claimant did not make a good faith job search in the qualifying period is not so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination, or the determination that the claimant is not entitled to SIBs for the fifth quarter, on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Judy L. Stephens
Appeals Judge