

## APPEAL NO. 002169

On August 29, 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 15th quarter. The claimant requests that we reverse the hearing officer's decision and render a decision 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 was a direct result of the 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).

The parties stipulated that on \_\_\_\_\_, the claimant sustained a compensable injury; that the claimant reached maximum medical improvement with an IR of 15% or greater; that the claimant did not commute IIBs; and that the 15th quarter was from June 10, 2000, through September 8, 2000. The parties were not asked to stipulate to the qualifying period and no stipulation on that matter was made. The hearing officer found that the qualifying period was from February 27, 2000, through May 26, 2000, and that finding is not appealed. Based on the stipulation as to the dates of the 15th quarter, the correct dates for the qualifying period would be February 27, 2000, through May 27, 2000, because Rule 130.101(4) provides that the qualifying period ends on the 14th day before the beginning date of the quarter and consists of the 13 previous consecutive weeks.

Under Rule 130.104(b), the carrier was to fill in on the Application for SIBs (TWCC-52) the number of the applicable quarter, the dates of the qualifying period, the dates of the quarter, and the deadline for filing the TWCC-52 with the carrier. The TWCC-52 in evidence for the 15th quarter states that the 15th quarter was from June 13, 2000, to September 11, 2000; that the qualifying period was from February 29, 2000, to May 29, 2000; and that the filing deadline was June 5, 2000.

The claimant testified that he injured his neck, shoulder, and back at work on \_\_\_\_\_, while working as a supervisor in a plant that manufactures paper bags. He had a cervical fusion at C5-6 and C6-7 on May 2, 1995, and another fusion at those levels on May 22, 1995. The claimant said that he has pain in his neck, back, and arms and that he takes pain medication every day.

The claimant's treating doctor, Dr. A, referred the claimant to Dr. C, who wrote in March 1999 that he was considering performing another cervical fusion on the claimant and that the claimant was unable to work. A May 1999 functional capacity evaluation (FCE) reflected that the claimant can perform medium category work. Dr. C referred the claimant to Dr. G, who reported in February 2000 that the claimant is unable to work and that the claimant needs to have more diagnostic testing done; however, the claimant testified that Dr. A, his treating doctor, released him to sedentary or light work in February 2000. An FCE report of July 25, 2000, described the claimant's capabilities as light strength with limitations, but stated that the claimant did not demonstrate the tolerance to perform in the light strength category.

The claimant said that in 1996 or 1997 he began a computer training course sponsored by the Texas Rehabilitation Commission (TRC) but that he had to drop out of that course during the second semester because of pain and because Dr. A pulled him out of that course. The claimant said that the TRC has told him that there is nothing they can do for him until he gets more medical treatment.

The claimant documented 32 job searches on his TWCC-52. Most of the jobs applied for were sales and cashier positions. The claimant said that he would work if he were offered a job within his restrictions. The claimant said that he looked in the newspaper want ads and other places for job openings and that he applied in person to all of the employers listed on his TWCC-52. The claimant said that he was unable to find any work. With regard to additional job searches, the claimant said that he talked to some people at an organization he belonged to, but that that was not documented. The claimant said that he goes to the Texas Workforce Commission (TWC) at least once a week or once every other week and that he has been active with the TWC every quarter. He said that the TWC has not given him any job leads. One of the 32 job contacts on the TWCC-52 is a May 17, 2000, visit to the TWC to update the claimant's file. The claimant indicated that the document attached to the TWCC-52 is from the TWC and it indicates a contact on May 17, 2000.

The earliest documented job search on the TWCC-52 is dated March 6, 2000. Thus, while there is no documented job search for the first week of the qualifying period (beginning date February 27, 2000), the March 6, 2000, job contact is within the first week of the dates of the qualifying period identified on the TWCC-52 (as noted, those dates were supposed to be filled in by the carrier and the beginning date of the qualifying period was shown as February 29, 2000).

The latest job search shown on the TWCC-52 is dated May 18, 2000. Since the qualifying period ended on May 27, 2000, there is no documented job search for the last week of the qualifying period (this would also be true using the May 26 ending date found by the hearing officer or the May 29 ending date shown on the TWCC-52). The claimant said that he was told to send in his TWCC-52 between the 22nd and the 25th of the month that preceded the beginning of the quarter.

The hearing officer found that the claimant's first documented job contact for the 15th quarter was on March 6, 2000; that the claimant's last documented job search for the 15th quarter was on May 18, 2000; that the claimant did not make and document a job search for each week of the qualifying period for the 15th quarter; and that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the 15th quarter. The hearing officer concluded that the claimant is not entitled to SIBs for the 15th quarter. The hearing officer noted in the discussion section of his decision that the claimant "made and documented no job searches or contacts for the first and last weeks of the relevant qualifying period."

The claimant states in his appeal that he did not know that there was a difference between the dates of the qualifying period and the dates of the actual quarter. Since the claimant is in his 15th quarter of SIBs, he should have some understanding that the dates of the qualifying period are different than the dates of the actual quarter. The claimant states in his appeal that he was told to mail his TWCC-52 in time to be received by the 24th or 28th of the month and that job contacts after that time have "gone on the next quarter" and that the first and last job applications are filed with the last and next quarter. Even if that is so, the claimant did not present at the CCH any documented job search after May 18, 2000. The term "subsequent quarter" applies to all quarters after the first quarter (Rule 130.101(6)) and Rule 130.104(c) provides that, for subsequent quarters, the TWCC-52 shall be filed with the carrier no later than 7 days before, and no earlier than 20 days before, the beginning of the quarter for which the injured employee is applying for SIBs. In the instant case, the filing deadline stated on the TWCC-52 was June 5, 2000, which was less than seven days before the actual beginning date of the quarter. The claimant's TWCC-52 is dated May 22, 2000.

The claimant states in his appeal that on some days he has to stay at home because of the pain medication he has to take for his compensable injury. While that may be so, he also testified that his treating doctor released him to sedentary or light-duty work in February and he did not contend at the CCH that he had no ability to work at all during the qualifying period.

The hearing officer's findings that the claimant's first documented job contact was on March 6, 2000, and that his last documented job search was on May 18, 2000, are supported by the evidence. We affirm the hearing officer's finding that the claimant did not make and document a job search effort for each week of the qualifying period; however, given the erroneous beginning date of the qualifying period stated on the TWCC-52, our affirmance is not based on the first week of the qualifying period but instead is based on the last week of the qualifying period. In determining whether a claimant who is able to return to work in any capacity has made a good faith effort to obtain employment commensurate with his ability to work the hearing officer should make findings of fact as to whether the claimant looked for employment commensurate with his ability to work every week of the qualifying period and whether he documented his job search efforts. Texas Workers' Compensation Commission Appeal No. 992612, decided January 3, 2000. The Appeals Panel has held that documentation of the job search is mandatory to establish a good faith job search. Texas Workers' Compensation Commission Appeal No. 992634, decided January 12, 2000.

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