

APPEAL NO. 002232

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 31, 2000. With respect to the single issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second quarter. In her appeal, the claimant argues that the hearing officer's determinations that she did not make a good faith job search commensurate with her ability to work; that her unemployment in the qualifying period was not a direct result of her impairment; and that she is not entitled to SIBs for the second quarter are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that she reached maximum medical improvement on December 17, 1998, with an impairment rating of 20%; that the claimant did not commute her impairment income benefits; that the second quarter of SIBs ran from May 12 to August 10, 2000; and that the claimant earned no wages during the qualifying period for the second quarter. Although the parties did not stipulate to the dates of the qualifying period, it was identified at the hearing as the period from January 28 to April 28, 2000.

The claimant testified that she was injured on _____, when a map in the classroom where she was teaching first grade fell from its brackets and hit her right arm. The claimant stated that her injury has progressed to reflex sympathetic dystrophy, carpal tunnel syndrome, and De Quervain's syndrome. She also maintained that both of her arms are now affected.

The claimant acknowledged that she had been released to light duty during the qualifying period by her treating doctor, Dr. P. The claimant's Application for [SIBs] (TWCC-52) demonstrates that she made 23 job contacts during the qualifying period. The claimant stated that she identified her contacts from the newspaper, the Texas Workforce Commission (TWC), and two employment agencies; that none of her contacts resulted in an interview. Seven of the 23 job contacts listed on the claimant's TWCC-52 were made with the TWC and in the period from April 7 to April 26, 2000, the claimant's only contacts were with the TWC. The claimant also testified that during the qualifying period, she enrolled in and attended graduate-level courses. She stated that she was going to school on her own during the qualifying period and that the Texas Rehabilitation Commission subsequently agreed to sponsor her in her retraining efforts. The claimant stated that she registered for six hours during the qualifying period but that she had to drop a three-hour class because the data entry work she had to perform for that class aggravated her symptoms. On cross-examination, the claimant acknowledged that she had applied for

several teaching positions in the qualifying period and that she had not agreed to interview with the self-insured for several available positions because of her belief that she was not fairly treated following her injury.

The claimant contends that she made a good faith job search in the qualifying period for the second 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 hearing officer noted that the attachments to the claimant's TWCC-52 reflect that the claimant made a job contact in each week of the qualifying period; however, that does not end the inquiry as to whether the claimant made a good faith job search. The hearing officer determined that the claimant did not have a well-structured job search plan and that "it appears that Claimant made the minimal attempt to seek employment merely for the purposes of qualifying for SIBs and not with the intention of re-entering employment." Those factors were properly considered by the hearing officer as they are contained in the non-exhaustive list of factors that can be considered by the hearing officer under Rule 130.102(e)(1) to (10) in evaluating the claimant's job search efforts. A review of the hearing officer's decision demonstrates that she simply was not persuaded that the claimant's job search efforts rose to the level of a good faith search to obtain employment as opposed to "going through the motions" to qualify for SIBs. The hearing officer's determination in that regard 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 on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer further determined that the claimant's unemployment in the qualifying period was not a direct result of her impairment. In so finding, the hearing officer noted that it appears that the claimant could return to her former teaching position and that the claimant's not wanting to return to work with the self-insured was due to personal reasons rather than because of her impairment. The hearing officer's determination in that regard is not so contrary to the great weight and preponderance of the evidence as to compel its reversal on appeal. Given our affirmance of the hearing officer's good faith and direct result determinations, we likewise affirm her determination that the claimant is not entitled to SIBs for the second quarter.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge