

APPEAL NO. 002250

This appeal is brought 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. The qualifying period for the first quarter for supplemental income benefits (SIBs) began on March 15, 2000, and ended on June 13, 2000. The hearing officer found that during the qualifying period the appellant's (claimant) unemployment was not a direct result of his impairment from the compensable injury, that the claimant had some ability to work, that he did not look for work every week of the qualifying period, and that the claimant did not make a good faith effort to find employment commensurate with his ability to work and concluded that the claimant is not entitled to SIBs for the first quarter. The claimant appealed, urged that the evidence established that he was unable to work during the qualifying period, and requested that the Appeals Panel reverse the decision of the hearing officer. The respondent (carrier) replied, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

DECISION

We affirm.

The Decision and Order of the hearing officer contains a statement of the evidence. Only a brief summary will be included in this decision. Prior to the October 1996 compensable injury, the claimant had his left leg amputated below the knee. The claimant had all four of his fingers on his left hand cut off by a table saw on _____. His thumb was not injured. Doctors reattached the index and middle fingers. The claimant has continued to have problems with the fingers that were reattached. In a note dated November 16, 1998, Dr. M, the claimant's treating doctor, stated that the claimant's little and ring fingers were totally amputated, that the claimant had a 68% loss of the left index finger and an 80% loss of the left middle finger, and that this resulted in a 47% impairment of the upper extremity and a 28% whole person impairment rating. The claimant testified that he has to keep his left hand elevated to keep it from swelling; that he has had three or four surgeries, the last surgery being in August 2000; that his doctor told him that he is disabled; that he was not able to work during the qualifying period; that he can drive a car with an automatic transmission, but does not have a car with an automatic transmission; that he has to have people drive him to get to places; and that he sought employment with three businesses that are close to where he lives.

In a Texas Workers' Compensation Work Status Report (TWCC-73) dated April 17, 2000, Dr. M indicated that the claimant was unable to work and was restricted from all work as of that date. In a progress note dated June 8, 2000, Dr. M stated that the claimant complained of pain in his index finger, that he had a painful osteophyte cyst that needed to be excised, and that the claimant would need clearance related to his heart problems before surgery could be performed. In a letter dated July 10, 2000, Dr. M stated that due to painful swelling of the interpharyngeal joint and the need for surgery to excise the osteophyte cyst, the claimant was considered unable to perform any work activity.

A report of a functional capacity evaluation dated June 9, 1999, states that the claimant can lift with his right hand, that his material-handling fitness is excellent, that he was not able to perform some tests because of the prosthesis on his left leg, that the claimant's return to work status is "disabled," and that

[p]rior to the injury to [claimant's] left hand he had significant functional deficits secondary to his left B/K [below the knee] amputation. The injury to the left hand has further limited [claimant] from a functional standpoint as is evident with the limited material handling capabilities and repetitive activities. Safety is a significant issue with the simplest of activities because of the nature of both disabilities. Although the material handling was completed with the use of both hands, safety again is of significance with [claimant's] ability to maintain grip strength for a sustained amount of time.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides in part:

- (d) Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:

* * * *

- (4) 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

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The hearing officer found that during the qualifying period the claimant had some ability to work and that he did not make a good faith effort to seek employment commensurate with his ability to work and concluded that the claimant is not entitled to SIBs for the first quarter. Those determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and are affirmed. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

We affirm the decision and the order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge