

APPEAL NO. 002254

Following a contested case hearing held on September 7, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the 11th and 12th quarters but is entitled to SIBs for the 13th quarter. The appellant (carrier) has appealed, asserting that the hearing officer's determination of SIBs entitlement for the 13th quarter is against the great weight of the evidence. The claimant urges in response that the evidence is sufficient to affirm the hearing officer's decision.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that she reached maximum medical improvement on July 30, 1996, with an impairment rating (IR) of 15% and has not commuted any portion of her impairment income benefits (IIBs); and that the 13th quarter began on June 8 and ended on September 5, 2000. The hearing officer identified the dates of the qualifying period for the 13th quarter as beginning on February 25 and ending on May 25, 2000.

The claimant testified that while working as a housekeeper at a motel on _____, she injured her knees, elbows, and back when she slipped on water and fell; that her right knee was the more seriously injured and that after first undergoing arthroscopic surgery on that knee, she later underwent a total knee replacement by Dr. H; and that Dr. H told her she could return to light-duty work but not to the type of work she had been doing at the motel. She also stated that Dr. S told her she could only do light work. Dr. S's January 29, 1999, report to the carrier of his required medical examination states that the claimant, whom he noted to then be 54 years of age and to have been educated in Mexico to the sixth grade level, could not tolerate the walking and standing associated with housekeeping in a motel or hotel, and that while she could return to light duty or to a sedentary position she cannot stand for long nor walk more than short distances nor can she kneel, squat, or climb. Dr. S further reported that these restrictions are permanent. Dr. S examined the claimant again and prepared another report dated June 13, 2000, stating that the claimant is able to return to work at light duty but probably not at full duty and that she needs to find a job where she spends a moderate amount of time sitting but yet can be up and about.

According to the claimant's Application for Supplemental Income Benefits (TWCC-52) for the 13th quarter, she made 42 job contacts during the qualifying period. The claimant stated that the jobs she sought were for light duty and that on five days in the qualifying period she actually obtained one-day jobs cleaning private homes and earning \$40.00 each day. She also testified that she contacted the Texas Rehabilitation

Commission and took courses in English on Saturdays so she could look for work on weekdays.

Section 408.142(a) provides that an employee is entitled to SIBs when the IIBs period expires if the employee has: (1) an IR of at least 15%; (2) not returned to work or has earned less than 80% of the employee's average weekly wage (AWW) 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.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(c) (Rule 130.102(c)) provides that an injured employee has earned less than 80% of the employee's AWW as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings.

Rule 130.102(d)(5) provides that "[a]n injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee: . . . (5) has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment." Rule 130.102(e) contains a number of factors that may be considered in making the good faith determination including the number and type of jobs sought, applications or resumes documenting the job search, education and work experience, any job search plan, amount of time spent looking for work, and so on.

The hearing officer found that during the qualifying period for the 13th quarter the claimant had some ability to work, made approximately 40 job contacts which resulted in no interviews or job offers, conducted and documented a job search effort every week, conducted a well-structured job search plan, and made a good faith effort to obtain employment commensurate with her ability to work. The hearing officer further found that the claimant's unemployment was a direct result of her impairment.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We find no merit in the carrier's appeal of the determination that the claimant's unemployment was a direct result of her impairment. Such finding is sufficiently supported by evidence deemed credible by the hearing officer that the claimant sustained a serious injury with lasting effects and that she could not reasonably perform the type of work being done at the time of the injury. See Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996. We are also satisfied that the hearing officer's findings addressing the good faith job search criterion are not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Judy L. Stephens
Appeals Judge