

APPEAL NO. 002279

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 22, 2000. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 13th quarter. Claimant appealed this determination on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order. The direct result determination was not appealed.

DECISION

We affirm.

Claimant contends the hearing officer erred in determining that he is not entitled to SIBs for the 13th quarter. Claimant asserts that the overwhelming evidence shows that he made a good faith weekly job search. Claimant contends that the hearing officer should have considered Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) as a whole when considering whether claimant met his burden regarding the good faith SIBs criteria. The applicable law and our standard of review are discussed in Texas Workers' Compensation Commission Appeal No. 001905, decided September 26, 2000. It was undisputed that the qualifying period ran from the end of January 2000 to the end of April 2000.

The hearing officer summarized the facts in his decision. It was undisputed that claimant has some ability to work and that he acted to document a weekly job search. See Rule 130.102(d)(5). Claimant said he has been a mechanic for many years, that he injured his neck while working as a mechanic, and that he now has numbness, cramping, and weakness in his right arm. The medical evidence indicates that claimant also injured his shoulder, that he underwent shoulder surgery, and that Dr. G stated that claimant cannot work at "his usual job." Claimant testified that he made 40 job searches during the qualifying period. However, the hearing officer determined that claimant did not meet his burden to prove he made a good faith effort to look for work commensurate with his ability to work. The hearing officer noted that claimant drove about 15 miles "to town" once per week during almost all weeks of the qualifying period and that he looked for two or three jobs during that time period. Claimant testified that the most time he ever spent looking for work when he drove in to town was about 45 minutes. He said he would then go home and care for his garden and his home the rest of the week.

Claimant complained that the hearing officer did not consider that he had previously been to school in prior years, which was sponsored by the Texas Rehabilitation Commission (TRC), and that he met with a TRC employee during the qualifying period to plan some more training. However, claimant did not say he was enrolled in a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period. Therefore, Rule 130.102(d)(2) does not apply. There is nothing to indicate that the hearing

officer did not consider the Commission's rules in making his good faith determination. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). In this case, it appears that the hearing officer was not convinced that claimant's job search effort rose to the level of good faith, when considering claimant's ability to work and the other factors listed in Rule 130.102. The hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

Judy L. Stephens
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Philip F. O'Neill
Appeals Judge