

APPEAL NO. 002451

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 September 27, 2000. With regard to the only issue before him, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the seventh compensable quarter because the claimant did not make a good faith effort to obtain employment commensurate with her ability during the qualifying period.

The claimant appealed, asserting that she searched for jobs to the best of her ability, that the hearing officer failed to understand her efforts of joining "job connection," and that her efforts amounted to a good faith effort to find employment commensurate with her ability. The claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The appeals file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The claimant had been employed as a victim's assistance coordinator when she was involved in a compensable motor vehicle accident and sustained injuries to her cervical and lumbar spine. The claimant has had cervical surgery and may need lumbar surgery in the future. The parties stipulated that the claimant sustained a compensable injury on _____; that the claimant has reached maximum medical improvement with a 15% or greater impairment rating (IR); that impairment income benefits (IIBs) have not been commuted; and that the qualifying period for the seventh quarter was from February 2 through May 2, 2000. The claimant testified that she has an associate's degree in psychology.

Sections 408.142(a) and 408.143, and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) provide 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 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. At issue in this case is subsection (4), whether the claimant made the requisite good faith effort to obtain employment commensurate with her ability to work. The hearing officer's finding on direct result has not been appealed and will not be addressed further.

Although the claimant principally proceeds on the theory of a good faith effort to seek employment, some comments and the medical reports suggest a total inability to work, a matter which we will briefly address. The standard of what constitutes a good faith effort to obtain employment in cases of a claimed total inability to work was specifically defined and addressed after January 31, 1999, as amended on November 28, 1999, in

Rule 130.102(d). Rule 130.102(d)(4) provides that the statutory good faith requirement may be met 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 claimant's treating doctor, Dr. E, in a report dated March 3, 2000, did say that the claimant "is completely disabled from working in any capacity" and that the claimant's pain prohibits her from "maintaining any form of gainful employment on a regular basis." However, a functional capacity evaluation (FCE) performed on February 29, 2000, indicated symptom magnification and submaximal effort. Dr. W, in a report dated March 22, 2000, referenced the FCE and commented that the claimant was "capable of doing sedentary work in the light category." The hearing officer commented that the medical evidence was "split on the issue of claimant's ability to work," and that Dr. E's "opinion is not persuasive," and found that the "claimant had some ability to work." That determination is supported by the evidence.

The good faith requirement may also be met by complying with Rule 130.102(e), which 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 claimant's Application for [SIBs] (TWCC-52) lists some 17 job contact entries made during the qualifying period. One is for "clean[ing] offices," which appears at odds with the claimant's restrictions; others are for a receptionist or "clean up shop." The carrier points out that two of the job contacts were actually going to the Texas Workforce Commission to check job listings and two others were to a job club for getting assistance in obtaining employment and getting computer training. The carrier contends that the claimant actually only made 11 or 12 job contacts and most of those could not be verified. The hearing officer commented:

Appeals Panel jurisprudence maintains that documentation must be shown [of a job search each week], and testimony alone does not constitute documentation. The claimant's evidence is overall insufficient to show that she made and documented the job-search effort required under the present rules.

The hearing officer found that the claimant "documented minimal job search efforts" and "did not make and document a weekly search for employment during the qualifying period in issue." We hold those determinations to be supported by the evidence.

Upon review of the record submitted, we find no reversible error. We will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150

Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kathleen C. Decker
Appeals Judge

Philip F. O'Neill
Appeals Judge