

APPEAL NO. 002501

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On September 29, 2000, a hearing was held. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 18th quarter. The claimant appealed. The respondent (carrier) responded.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Rule 130.102(b) provides that an injured employee who has an impairment rating (IR) of 15% or greater, and who has not commuted any impairment income benefits, is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee 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. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, 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.

There is no appeal of the hearing officer's finding that the claimant's unemployment during the qualifying period was a direct result of the compensable injury. The SIBs criterion in dispute is whether the claimant attempted in good faith to obtain employment commensurate with his ability to work during the qualifying period. Section 408.142(a)(4); Rule 130.102(b)(2). The claimant contended that he had no ability to work during the qualifying period and that he actually performed a job search in good faith.

The claimant testified that he sustained an injury at work on _____, when he was hit in the head by a piece of metal. The parties stipulated that on _____, the claimant sustained a compensable injury; that the claimant reached maximum medical improvement on April 27, 1995; that the claimant has a 15% IR; that the 18th quarter was from June 2 to August 31, 2000; that the qualifying period for the 18th quarter was from February 18 to May 18, 2000; and that during the qualifying period the claimant did not work nor did he earn any wages.

The claimant testified that during the qualifying period he had no ability to work; that his treating doctor, Dr. N, had him off work; that he took pain medications; and that he looked for work. The claimant said that after the qualifying period ended, he started taking an English language course and an accounting class.

Dr. N reported in April 2000 that the claimant had no ability to work from November 19, 1999, to February 17, 2000, due to neck and back pain.

Dr. B examined the claimant in September 1999 and reported that the claimant can perform light-duty work.

On his Application for SIBs for the 18th quarter, the claimant listed 11 job contacts, with the first contact on April 3, 2000, and the last contact on May 16, 2000. The claimant presented an additional list of 22 job contacts, all of which he said he contacted by telephone and which he indicated occurred in February and March 2000 (the actual dates of the contacts were not given).

The hearing officer found that during the qualifying period for the 18th quarter the claimant had some ability to work and that the claimant failed to make a good faith effort to obtain employment commensurate with his ability to work. The hearing officer concluded that the claimant is not entitled to SIBs for the 18th quarter. The claimant appeals those determinations. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Kathleen C. Decker
Appeals Judge