

APPEAL NO. 002506

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 13, 2000. With respect to the single issue before him, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 10th quarter. In its appeal, the appellant (carrier) argues that the hearing officer's determinations that the claimant made a good faith effort to look for work commensurate with his ability to work and that he is entitled to SIBs for the 10th quarter are against the great weight of the evidence. In his response to the carrier's appeal, the claimant urges affirmance. The carrier did not appeal the determination that the claimant's unemployment was a direct result of his impairment and that determination has, therefore, become final. Section 410.169.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that he reached maximum medical improvement on October 1, 1996, with an impairment rating of 24%; that he did not commute his impairment income benefits; that the 10th quarter of SIBs ran from May 17 to August 15, 2000; and that the qualifying period for the 10th quarter ran from February 3 to May 3, 2000. The claimant injured his back and right hip on _____, when he slipped on ice at work. The claimant underwent a total right hip replacement in 1994 and has received conservative treatment for his back injury, including periodic epidural steroid injections. The claimant testified that he had been advised that the problems with his back "couldn't be fixed."

The claimant's treating doctor, Dr. KG, has opined that the claimant is "totally disabled from work," noting that he has a sitting and standing tolerance of less than 15 minutes, that he cannot lift more than 10 pounds except on an occasional basis, and that he has limitations to bending, squatting, kneeling, reaching above shoulder level, and fine motor movements. In a report dated July 2, 1996, Dr. MG, a carrier-selected doctor, opined that the claimant could return to sedentary work. In a letter dated March 26, 1998, Dr. R, who also apparently examined the claimant at the request of the carrier, addressed the question of the claimant's ability to work. Dr. R stated that the claimant could probably sit or stand three to four hours per day and probably no more than one to one and one-half hours at a time without lying down; and that he could occasionally lift 20 pounds and a maximum of 10 to 15 pounds frequently. Dr. R further stated:

[Claimant] would not tolerate bending, stooping, squatting, crawling, or kneeling to any degree. Probably not more than 2 or 3 times per day, and even that would be of some problem. As far as reaching above his shoulder level, he can do that occasionally. Fine motor movements, while the movements would not be restricted, the sensation in his fingers would hinder

accuracy of such movements. Again, as in my previous notes, I have doubts that the patient would be suitable for any occupation except a very specifically designed situation just for him. Employment would be quite difficult.

In a letter date May 20, 1999, the Texas Rehabilitation Commission stated that it had determined that the claimant was not a candidate for vocational rehabilitation services “[b]ased on physicians recommendations for inability to work and vocational testing performed.”

The claimant submitted a list of job searches during the qualifying period, which demonstrated that he made 69 job contacts and that he looked for work in every week of the qualifying period. The claimant testified that he went in person to each of the employers he contacted and that he made employment searches in the towns surrounding the small town where he lives. On cross-examination, the claimant acknowledged that he served as the treasurer for his church and as a city council member; however, he stated that all he was required to do for the church was to make a weekly deposit at the bank and that his duties in the city council required him to attend a monthly meeting and to vote on items on the agenda. In addition, the claimant admitted that he owned approximately 26 head of cattle during the qualifying period; however, he stated that friends and his grandson did the work associated with caring for them.

The hearing officer determined that the claimant made a good faith job search in the qualifying period for the 10th quarter. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.102(e) (Rule 130.102(e)) 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." The attachments to the claimant's Application for [SIBs] (TWCC-52) reflect that the claimant made a job contact in each week of the qualifying period. The hearing officer also noted that the claimant lived in a rural area where employment opportunities were limited, and made reference to the claimant's age, limited education, his past work experience which had primarily been in heavy occupations, and his significant work restrictions. Those factors were properly considered by the hearing officer as they are contained in the nonexhaustive list of factors that can be considered by the hearing officer under Rule 130.102(e)(1) to (10) in evaluating the claimant's job search efforts. The factors emphasized by the carrier on appeal to call into question the good faith nature of the claimant's job search efforts were similarly emphasized at the hearing. The significance, or lack thereof, of those factors was a matter left to the determination of the hearing officer, as the fact finder. The hearing officer's determination that the claimant made a good faith search for employment in the qualifying period is not so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination, or the determination that the claimant is entitled to SIBs for the 10th quarter, on appeal . Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Judy L. Stephens
Appeals Judge