

APPEAL NO. 002703

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 November 8, 2000. The hearing officer determined that the appellant (claimant herein) is not entitled to supplemental income benefits (SIBs) for the second quarter. The claimant appeals, contending that the hearing officer's decision was contrary to the evidence. The respondent (carrier herein) replies that the evidence sufficiently supported the findings of the hearing officer.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Sections 408.142 and 408.143 provide that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment and (2) has in good faith sought employment commensurate with his or her ability to work. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b) (Rule 130.102(b)), the quarterly entitlement to SIBs is determined prospectively and depends on whether the employee meets the criteria during the "qualifying period." Under Rule 130.101, "qualifying period" is defined as the 13-week period ending on the 14th day before the beginning of a compensable quarter.

The only question before us on appeal is whether or not the hearing officer committed error in finding that the claimant did not seek employment in good faith commensurate with his ability to work. We have previously held that the question of whether a claimant made a good faith job search is a question of fact. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Rule 130.102(e) provides:

- (e) Job Search Efforts and Evaluation of Good Faith Effort. Except as provided in subsection (d)(1), (2), (3), and (4) of this section, 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 determining whether or not the injured employee has made a good faith effort to obtain employment under subsection (d)(5) of this section, the reviewing authority shall consider the information from the injured employee, which may include, but is not limited to information regarding:

- (1) number of jobs applied for throughout the qualifying period;
- (2) type of jobs sought by the injured employee;
- (3) applications or resumes which document the job search efforts;
- (4) cooperation with the Texas Rehabilitation Commission;
- (5) cooperation with a vocational rehabilitation program provided by a private provider that is included in the Registry of Private Providers of Vocational Rehabilitation Services;
- (6) education and work experience of the injured employee;
- (7) amount of time spent in attempting to find employment;
- (8) any job search plan by the injured employee;
- (9) potential barriers to successful employment searches;
- (10) registration with the Texas Workforce Commission; or
- (11) any other relevant factor.

Applying our standard of review, as well as the requirements of the 1989 Act and the rules cited above, we find no error in the hearing officer's determination that the claimant was not entitled to SIBs for the second quarter. The hearing officer found that the claimant failed to make a good faith job search. While the claimant presented some evidence of a limited job search, testifying that he sought employment with 13 employers during the filing period, the hearing officer was not required to be persuaded that this evidence constituted proof of a good faith job search. The hearing officer, in reviewing the details of the claimant's search, found that the claimant did not conduct a well-structured job search plan. While the claimant argues that he met the requirement of a weekly job search, this did not prevent the hearing officer from considering the other factors listed in Rule 130.102(e).

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge