

APPEAL NO. 002706

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 8, 2000. With regard to the issues before him, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 16th and 17th compensable quarters because he had not made a good faith effort to obtain employment commensurate with his ability to work.

The claimant appealed, reiterating his testimony from the CCH that his truck was old and that he could barely afford postage to send out resumes. The claimant requests that we reverse the hearing officer's decision and render a decision in his favor. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable (low back) injury on _____; that the claimant has a 25% impairment rating (IR); that impairment income benefits (IIBs) have not been commuted; and that the 16th quarter qualifying period was from March 24, 2000, through June 24, 2000, with the 17th quarter qualifying period being from June 25, 2000, through September 23, 2000. Although the claimant testified how his back hurts, it appears relatively undisputed that the claimant has the ability to work up to the medium-work capacity. The claimant has declined spinal surgery and work hardening. The claimant received SIBs through the 15th quarter by being enrolled in a full-time vocational rehabilitation program with the Texas Rehabilitation Commission. The claimant received a certification in microcomputer maintenance in March 2000.

Sections 408.142(a) and 408.143 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 his ability to work. The hearing officer's finding on direct result has not been appealed and will not be addressed further.

At issue here is whether the claimant's efforts amounted to a good faith effort to obtain employment commensurate with his ability to work. The applicable rule is Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)), which provides in pertinent 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. A number of factors to be considered are listed in Rule 130.102(e)(1) through (11). The claimant's Application for Supplemental Income Benefits (TWCC-52) for the 16th quarter

lists some 15 job contacts but does not list dates of the contacts. The claimant testified that he in fact did not make a job search every week of the qualifying period and took the month of April off as his last "hoorah" before beginning to seek employment. The claimant did not meet the requirements of Rule 130.102(e) for the 16th quarter.

The claimant's TWCC-52 for the 17th quarter has 23 contacts but they were all made on only three days during the qualifying period, July 30, August 29, and either September 8 or August 8, 2000. The claimant explained that he would either get his benefits check or borrow money once a month and use that money to mail out resumes to potential job opportunities that had been identified by the carrier's vocational rehabilitation counselor. The carrier's investigator testified that he was able to verify only two of the claimant's 23 job contacts. It appears clear that the claimant did not look for employment every week of the qualifying period. The claimant has not complied with the requirements of Rule 130.102(e) for either of the quarters at issue here.

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:

Kenneth A. Huchton
Appeals Judge

Philip F. O'Neill
Appeals Judge