

APPEAL NO. 002817

Following a contested case hearing held on November 13, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the respondent (claimant) was not entitled to supplemental income benefits (SIBs) for the first and second quarters, but was entitled to SIBs for the third quarter. The appellant (carrier) files a request for review, challenging specific findings by the hearing officer and arguing that the hearing officer erred in finding that during the filing period for the third quarter the claimant made a good faith effort to seek employment and her unemployment was a direct result of her impairment. There is no response to the carrier's request for review from the claimant in the appeal file nor is there any appeal of the hearing officer's resolution of the issues concerning the first and second quarters. We adopt the rendition of the evidence in the decision of the hearing officer.

DECISION

Reversed and rendered.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b) (Rule 130.102(b)) provides as follows:

Eligibility Criteria. An injured employee who has an impairment rating 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.

The carrier specifically challenges the following findings of fact and conclusion of law in the hearing officer's decision:

FINDINGS OF FACT

21. Claimant has not satisfied the individual criteria set forth at Rule 130.102(d)(1) to (4) and (e), but the hearing officer, pursuant to the "any other relevant factor" criterion at Rule 130.102(e)(10) [sic (11)], would find that, taken together, Claimant's activities during the qualifying period for the 3rd quarter of participating in Texas Rehabilitation Commission activities, looking for work, and working constitute a good faith effort to obtain employment.

* * * *

23. During the qualifying period for the 3rd quarter, Claimant attempted in good faith to obtain employment commensurate with Claimant's ability to work.
24. Claimant's decrease in earnings during the qualifying periods for the 1st, 2nd, and 3rd quarters is a direct result of Claimant's impairment from her compensable injury.

CONCLUSION OF LAW

3. Claimant is entitled to [SIBs] for the 3rd quarter, but is not entitled to [SIBs] for the 1st or 2nd quarters.

The main thrust of the carrier's attack on these findings is that the hearing officer did not have the authority to combine partial fulfillment of Rule 130.102(d)(1), (2), (3) and (4) to find a good faith effort to seek employment through relying on Rule 130.102(e)(11). We have previously held that when a claimant seeks employment during a filing period and that search leads to employment, the claimant is not required to look for work in each week leading up to the employment or to work some set portion of the filing period. Texas Workers' Compensation Commission Appeal No. 001244, decided July 7, 2000. The problem with applying this doctrine in the present case is that the hearing officer specifically has found in Finding of Fact No. 21, as well as other of his factual findings, that the claimant did not meet the requirements of Rule 130.102(d)(1), (2), (3), or (4). In other words, this case does not present a case where the hearing officer has found that the claimant met the requirements of Rule 130.102(d)(1), (2), (3), or (4) during different parts of the filing period, but one in which the hearing officer has found that the claimant never fully met the requirements of any of these provisions during the filing period. The hearing officer's finding of eligibility for SIBs is based upon his finding that he has authority under Rule 130.102(e)(11) to find good faith based upon the claimant only partially meeting the requirements of Rule 130.102(d)(1), (2), (3), and (4) during different portions of the filing period. We find this to be error for two reasons. First, the hearing officer, if applying Rule 130.102(e), must apply the requirement of Rule 130.102(e) that the claimant seek employment during every week of the filing period. In his decision, the hearing officer explicitly found that the claimant did not meet this requirement. Thus, his reliance on Rule 130.102(e) is misplaced. Secondly, we find no authority, in Rule 130.102(e)(11) to allow the hearing officer to base a finding of good faith job search on the claimant's only partly meeting the requirements of Rule 130.102(d)(1), (2), (3), and/or (4). Therefore, based upon the factual finding in the hearing officer's decision, we render a new decision that the claimant is not entitled to SIBs for the third quarter.

However, we make clear that we the reject the carrier's argument that the claimant failed to establish that her unemployment was a direct result of her impairment. We have stated that a finding of "direct result" is sufficiently supported by evidence that an injured

employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. There is certainly such evidence in the record before us.

Gary L. Kilgore
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge