

APPEAL NO. 002863

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 13, 2000. The hearing officer determined that respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter. Appellant self-insured ("carrier" herein) appealed these determinations on sufficiency grounds. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We reverse and render.

Carrier contends the hearing officer erred in determining that claimant made a good faith effort to search for work commensurate with her ability to work. Among other things, carrier asserts that claimant did not make a good faith job search the first three weeks of the qualifying period. The hearing officer determined that claimant "made job contacts and started work creating her own business even prior to the beginning of the" qualifying period. He also determined that claimant searched for work every week of the qualifying period.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(5) (Rule 130.102(d)(5) states 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 provided sufficient documentation to show that he or she has made a good faith effort to obtain employment. The applicable law is discussed in Texas Workers' Compensation Commission Appeal No. 001735, decided September 12, 2000. Claimant did not document a job search during the third week of the qualifying period. That week started June 15, 2000. Claimant's Application for [SIBs] (TWCC-52) does not list any job searches or other related self-employment activity during that week. Claimant included a calendar of her job search activities in the record, but this calendar also does not document any job contacts or activities related to self-employment for the week of June 15, 2000. Claimant made an effort to document self-employment activities that occurred the first two weeks of the qualifying period. Although there is a flyer or resume in the record and an indication in a letter from claimant's Texas Rehabilitation Commission counselor that claimant had been developing a home-based business, whatever efforts she made during the third week of the qualifying period were not documented. Due to the lack of documentation of a job search for the third week of the qualifying period, the evidence does not show that claimant made a good faith effort to search for work commensurate with her ability to work. We conclude that the hearing officer's determination regarding good faith is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we reverse it. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Carrier contends the hearing officer erred in determining that claimant's unemployment is a direct result of her impairment. Carrier asserts that claimant's other health and financial concerns were the cause of her unemployment. The general

background facts of this case were set forth in the hearing officer's decision and will not be repeated here. In a report written early in the qualifying period, Dr. A discussed claimant's compensable shoulder and arm problems and stated that claimant has a "chronically torn cuff," that she is not able to abduct or forward flex her arm, that she cannot return to work as a schoolteacher, and that she is capable of doing only limited, part-time teaching. Rule 130.102(c) states that an injured employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a *cause* of the reduced earnings. The hearing officer's direct result determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

We reverse the hearing officer's determination that claimant is entitled to SIBs and render a decision that claimant is not entitled to SIBs for the first quarter.

Judy L. Stephens
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge