

APPEAL NO. 002922

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 21, 2000, a hearing was held. The hearing officer determined that: (1) the respondent (claimant) was not entitled to supplemental income benefits (SIBs) for the third quarter; and (2) the claimant was entitled to SIBs for the fourth quarter. The appellant (carrier) appealed, asserting that the claimant failed to make a good faith job search and, therefore, did not qualify for fourth quarter SIBs. No response to the appeal was filed.

DECISION

Reversed and rendered.

The hearing officer erred in determining that the claimant was entitled to fourth quarter SIBs. 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 percent of her average weekly wage as a direct result of the impairment, and (2) has in good faith sought employment commensurate with her ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)) provides that an injured employee 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.

We have held that the documentation requirement of Rule 130.102(e) is mandatory and nondocumented employment contacts may not be considered in arriving at the good faith determination. Texas Workers' Compensation Commission Appeal No. 000505, decided April 20, 2000; Texas Workers' Compensation Commission Appeal No. 992321, decided November 22, 1999. A careful review of the record reveals no documentary evidence of a job search by the claimant for the fourth week (April 28, 2000, through May 4, 2000); the tenth week (June 9, 2000, through June 15, 2000); or the thirteenth week (June 30, 2000, through July 6, 2000) of the qualifying period for fourth quarter SIBs. Therefore, the hearing officer's determination that the claimant sought employment during each week of the qualifying period is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision of the hearing officer is reversed and a new decision is rendered that the claimant is not entitled to fourth quarter SIBs.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge