

APPEAL NO. 002945

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 29, 2000, a hearing was held. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth quarter and that the claimant did not fail to timely file his Application for SIBs (TWCC-52). The claimant and the respondent/cross-appellant (carrier) appealed.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the fifth quarter (June 2 to August 31, 2000) and thus was not entitled to SIBs for that quarter.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in dispute was whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the fifth quarter. The claimant sustained a compensable injury to his left wrist on _____, for which he underwent two surgeries, the last one in 1998. An April 2000 functional capacity evaluation report concluded that the claimant can work a sedentary job with lifting restrictions of 10 pounds.

The claimant listed 42 employment contacts during the qualifying period, 14 of which were repeat contacts during that period. The claimant's testimony reflected that he had no job search plan other than to go to various places of business and ask if they were hiring. His documentation indicated that none of the employers he contacted were hiring and that he submitted 12 job applications. His testimony and documentation also reflected that he spent only one-half hour to one hour a week looking for work (10 to 15 minutes per job contact). Under Rule 130.102(e), in determining whether the claimant made a good faith effort to obtain employment commensurate with his ability to work, the hearing officer could consider, among other things, the number of jobs applied for, the amount of time spent in attempting to find employment, and any job search plan by the injured employee. The issue in dispute presented a question of fact for the hearing officer to resolve based on the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer was not persuaded that the claimant's efforts amounted to a good faith effort to obtain employment commensurate with the claimant's ability to work. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer apparently found credible the claimant's testimony that the carrier failed to timely mail to him the TWCC-52 for the fifth quarter and determined that the carrier is not relieved of liability for SIBs based on a failure to timely file the TWCC-52. Rule 130.105(a)(1). The conflicting evidence on this matter was for the hearing officer to resolve as the finder of fact. The hearing officer's decision is supported by sufficient evidence and is not against the great weight and preponderance of the evidence.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge