

APPEAL NO. 002964

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 30, 2000. He found that the appellant (claimant) was not entitled to the 11th quarter of supplemental income benefits (SIBs) because he had not made a good faith search for employment commensurate with his ability to work. In so holding, the hearing officer rejected the argument that the claimant's self-employment efforts demonstrated fulfillment of the good faith job search requirement.

The claimant has appealed with a long argument of facts that he believes refute the hearing officer's decision, while the respondent (carrier) responds by countering such facts.

DECISION

We affirm the hearing officer's decision.

The qualifying period ran from April 8 through July 7, 2000. We conclude that the hearing officer did not err in finding that the claimant failed to prove that he made a good faith search for employment commensurate with his ability to work. The hearing officer has reviewed the facts in considerable detail, which will not be repeated here.

Because the claimant did not search for work during the applicable period, he was required to meet the "good faith" job search requirement in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1)-(5) (Rule 130.102(d)(1)-(5)). The hearing officer could evaluate whether the claimant demonstrated a return to work relatively equal to his ability to work (Rule 130.102(d)(1)) such that a search for employment was not required. See Texas Workers' Compensation Commission Appeal No. 001635, decided August 25, 2000 and Texas Workers' Compensation Commission Appeal No. 002188, decided October 25, 2000.

While the claimant's self-employment efforts are commendable, the hearing officer has correctly noted that documentation of the asserted net profits and deductions therefrom is incomplete, unverifiable, and not in compliance with the requirements of Rule 130.101(1)(D). Mere testimony that one does not file sales tax and income tax returns because a business does not meet minimum income or sales requirements is not probative of the law when applicable statutes, regulations, and case law are readily available and can be brought to the attention of the hearing officer. In this case, the hearing officer was not asked to take official notice of any federal regulations which would exempt the claimant from the need, as a small business, to file income tax or information returns documenting under oath claimed receipts and deductions therefrom.

The claimant's written materials in evidence, corroborated by his testimony, reveal an ability to perform the asserted self-employment related activities 14 to 16 hours throughout the day, including extensive computer work and travel outside the state; yet, the claimant also contends that a regular job consisting of 8 hours a day, 40 days a week,

would prove beyond his capabilities (or "exhausting" as described in a written statement in evidence). The claimant has a bachelor's degree in engineering, and the vocational consultant for the carrier was able to locate numerous jobs that would appear to be within the claimant's physical limitations, as testified to by the treating doctor, and would pay considerably more than he admitted to earning through his self-employment. All of these were factors the hearing officer could consider.

The hearing officer did not err in finding that the claimant filed his Application for [SIBs] (TWCC-52) late. The burden of proving timely filing is on the claimant. The claimant asserted that he mailed the TWCC-52 timely but was told that it was not received. The claimant followed up by filing another TWCC-52 with the field office of the Texas Workers' Compensation Commission rather than the carrier. Another TWCC-52 was subsequently filed with the carrier in August 2000. In this case, absent a certified mailing "green card" from the carrier, the hearing officer was not required to surmise that the carrier received, but lost, a timely filed TWCC-52.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge