

APPEAL NO. 010070

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 5, 2000, a hearing was held. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 10th quarter. The claimant appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision is affirmed.

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). It is undisputed that the claimant had an ability to work during the qualifying period for the 10th quarter (May 6 through August 4, 2000). The claimant worked as a receptionist for several weeks during the qualifying period but was fired from that job. The claimant said that it was difficult to work for that company because she had too many job duties. The claimant also worked on two other days during the qualifying period. The claimant sought employment with temporary employment agencies during the qualifying period. Affidavits from two of those agencies reflect that the agencies believed that the claimant was not really interested in obtaining employment based on her actions and conduct in failing to respond to job offers and declining job offers without explanation. The claimant disagreed with those affidavits. The hearing officer found that during the qualifying period the claimant's inability to earn 80% of her average weekly wage was not a direct result of her impairment from her compensable injury, that during the qualifying period the claimant did not make a good faith effort to obtain employment commensurate with her ability to work, and that during the qualifying period the positions held by the claimant were not relatively equal to her ability to work. Whether the claimant made a good faith effort to obtain employment commensurate with her ability to work and whether the claimant's underemployment was a direct result of her impairment from her compensable injury were fact questions for the hearing officer to determine from the conflicting evidence. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). 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's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge