

APPEAL NO. 010359

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 February 7, 2001. With respect to the issues before her, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the seventh or eighth quarters. The claimant appeals, apparently on sufficiency of the evidence grounds. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant injured her low back, right shoulder, and neck on _____. The parties stipulated that the claimant sustained a compensable injury on that date, that the claimant has a 17% impairment rating, and that impairment income benefits were not commuted. The hearing officer determined that the qualifying period for the seventh quarter began on June 7, 2000, and ended on September 5, 2000, and the qualifying period for the eighth quarter began on September 6, 2000, and ended on December 5, 2000. These quarters are subject to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)). The hearing officer's determination that the claimant's unemployment during the qualifying periods for the seventh and eighth SIBs quarters was a direct result of the claimant's impairment from the compensable injury has not been appealed and will not be addressed further.

At issue in this case is whether the claimant made the requisite good faith effort to obtain employment commensurate with her ability to work. The hearing officer determined that the claimant "had an ability to work at the sedentary physical demand level" and that the "Claimant did not conduct and document a job search effort every week of the qualifying period." The claimant contends the hearing officer erred in determining that she is not entitled to SIBs. Rule 130.102(e) concerns good faith and provides that "[a]n 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." The hearing officer determined that "[i]t appears that the Claimant attempted to conduct and document a job search effort every week of the qualifying periods, yet in light of the Appeals Panel interpretation regarding definition of 'week' and when the weeks begin and end during the qualifying periods, the Claimant failed to conduct and document a job search effort every week of the qualifying period." See Texas Workers' Compensation Appeal No. 002163-S, decided November 1, 2000. The hearing officer cites specific weeks (June 14, 2000, through June 20, 2000; July 5, 2000, through July 11, 2000; August 16, 2000, through August 22, 2000; September 13, 2000, through September 19, 2000; October 18, 2000, through October 24, 2000; and November 22, 2000, through November 28, 2000), during which the claimant did "not document a job search effort."

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer did not err in the application of Rule 130.102(e). As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not 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, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995.

We affirm the hearing officer's decision and order.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge