APPEAL NO. 010368

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 17, 2001, the hearing officer resolved the disputed issue by concluding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the eighth quarter. The claimant appeals, contending that his evidence established his entitlement. The respondent (carrier) urges in response that the evidence is sufficient to support the challenged findings and conclusion.

DECISION

Affirmed.

The hearing officer did not err in finding that during the qualifying period the claimant had some ability to work, did not make a weekly search for employment commensurate with his abilities, was not enrolled in a full-time vocational rehabilitation program under the auspices of the Texas Rehabilitation Commission, and did not make a good faith effort to obtain employment commensurate with his abilities. The requirements for entitlement to SIBs are set forth in Sections 408.142 and 408.143 and in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102).

The parties stipulated that the qualifying period for the eighth quarter ran from June 8, 2000, to September 6, 2000. In her August 24, 1999, report of the functional capacity evaluation of the claimant, Dr. S determined that his testing inconsistencies demonstrated that he gave minimal effort and that he has the ability to perform work in the medium category of physical demand. It was for the hearing officer, as the finder of fact, to consider the date of this report relative to the qualifying period. When asked if he had any ability to work during the qualifying period the claimant responded, "I guess to some point" but said such ability varied from day to day. At another point the claimant said he did not have the ability work but that he nonetheless made a job search.

The claimant testified that he signed an Application for [SIBs] (TWCC-52) on September 12, 2000, reflecting that between May 22 and July 2, 2000, he made 28 contacts. The TWCC-52 also reflected that nine contacts preceded the beginning of the qualifying period, that three were at the Texas Workforce Commission where the claimant did computer searches, and that none of the contacts were made in person. The claimant signed an "amended" TWCC-52 on December 15, 2000, which reflected that between July 6 and September 19, 2000, he made 27 contacts, four outside the qualifying period and seven in person. He could not say why he had not listed these additional job contacts on his original TWCC-52. Rule 130.102(e) provides, in part, that "an injured employee who has not returned to work and is able to return to work in any capacity 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." Rule 130.102(e) goes on to set forth a number of factors which may be considered in determining whether an injured employee

has made a good faith effort to obtain employment including, but not limited to, the numbers and types of jobs sought, applications or resumes documenting the job search efforts, the amount of time spent in attempting to find employment, and any job search plan by the injured employee.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We are satisfied that the challenged findings are 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge