

APPEAL NO. 010484

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 13, 2001. The hearing officer determined that: (1) the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 21st compensable quarter; and (2) the respondent (carrier) was relieved of liability for SIBs from November 15, 2000, through November 27, 2000, because the claimant failed to timely file her Application for Supplemental Income Benefits (TWCC-52) for the 21st compensable quarter. The claimant urges reversal on the issues, asserting that the hearing officer's decision is contrary to the great weight of the evidence. The carrier urges affirmance.

DECISION

Affirmed.

Entitlement to 21st Quarter SIBs

The hearing officer did not err in determining that the claimant was not entitled to SIBs for the 21st compensable quarter. The claimant had the burden to prove that she made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period. Texas Workers' Compensation Commission Appeal No. 941490, decided December 19, 1994; Sections 408.142(a)(4) and 408.143(a)(3); and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Rule 130.102(e) permits the hearing officer to consider a number of factors in evaluating good faith.

Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. There was conflicting evidence presented at the hearing with regard to this issue. The hearing officer's 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 (Tex. 1986).

Carrier's Liability for 21st Quarter SIBs

The hearing officer did not err in determining that the carrier was not liable for SIBs from November 15, 2000, through November 27, 2000. Rule 130.105(a)(1), provides, in part, that "[a]n injured employee who does not timely file [a TWCC-52] with the insurance carrier shall not receive [SIBs] for the period of time between the beginning date of the quarter and the date on which the form was received by the carrier, unless the following apply: (1) the failure of the insurance carrier to timely mail the form to the injured employee as provided by §130.104 of this title (relating to Determination of Entitlement or Non-entitlement for Subsequent Quarters)" Rule 130.104(f) provides that if the employee is entitled to SIBs for a subsequent quarter, the benefits begin to accrue on the

later of the first day of the applicable quarter or the date the TWCC-52 is received by the carrier, subject to the provisions of Rule 130.105.

The claimant stipulated that the 21st compensable quarter began on November 15, 2000, and continued through February 13, 2001. The claimant further stipulated that she filed her TWCC-52 on November 27, 2000. The claimant did not assert that the carrier failed to timely mail the TWCC-52 form as required by Texas Workers' Compensation Commission rules. Therefore, the hearing officer's determination that the claimant is not entitled to SIBs for the time period that she failed to timely file her TWCC-52 is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge