

APPEAL NO. 010693

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 March 9, 2001. With respect to the issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 10th quarter. In his appeal, the claimant asserts error in the admission of Carrier's Exhibit No. 1. The claimant also contends that the hearing officer's determinations that he did not make a good faith job search in the qualifying period for the 10th quarter and that he is not entitled to SIBs for the 10th quarter are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer determined that the claimant did not make a good faith effort to look for work commensurate with his ability to work in the qualifying period for the 10th quarter of SIBs. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(5) (Rule 130.102(d)(5)) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee "has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment." Subsection (e) of Rule 130.102 provides, in relevant 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) also includes a non-exhaustive list of factors to be considered in determining whether the injured employee has made a good faith job search.

The issue of whether the claimant made a good faith job search in the qualifying period for the 10th quarter was a question of fact for the hearing officer to resolve. 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 reviews the evidence before her and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. The factors emphasized by the hearing officer in evaluating the nature of the claimant's search are all specifically listed in Rule 130.102(e) as proper factors to consider in resolving the good faith issue. Simply put, the hearing officer was not persuaded that when the claimant's job search efforts were considered as a whole, they demonstrated that he made a good faith effort to look for work in the qualifying period. Nothing in our review of the record demonstrates that that determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse

the hearing officer's good faith determination, or the determination that the claimant is not entitled to SIBs for the 10th quarter, on appeal. Cain, *supra*.

The claimant objected to Carrier's Exhibit No. 1, the report of an investigator hired by the carrier to investigate the claimant's job search efforts, because it was "hearsay within hearsay." The hearing officer overruled the claimant's objection, noting that she would consider the objection in deciding what weight to assign to the report. The hearing officer correctly noted that the claimant's objection went to weight rather than admissibility for purposes of this proceeding. We perceive no error in the evidentiary ruling.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge