

## APPEAL NO. 010728

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was begun on December 1, 2000, but was continued because the appellant (claimant) failed to appear at that time. The CCH was rescheduled and held on February 9, 2001, the hearing officer decided the issues of entitlement to 11th through 13th quarter supplemental income benefits (SIBs) adversely to the claimant. The hearing officer added a fourth issue on her own motion. That issue was: Did the claimant have good cause for failing to appear at the CCH scheduled for December 1, 2000? At the CCH, the hearing officer determined that the claimant did have good cause for failing to appear. The claimant has appealed the adverse determinations of the hearing officer on sufficiency of the evidence grounds. The respondent (carrier) has responded, and urges that the determinations of the hearing officer be affirmed.

### DECISION

Affirmed.

The claimant has the burden of proving entitlement to SIBs for any quarter claimed. The eligibility requirements for SIBs are set out in Sections 408.142 and 408.143 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b) (Rule 130.102(b)) and will not be repeated here. An injured employee can satisfy the requirement that he make a good faith effort to obtain employment commensurate with his ability to work in several ways, as set out in Rule 130.102(d)(1) through (5). The claimant had not returned to work, had not been enrolled in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission or a private provider, or shown that he was unable to work in any capacity. The only avenue left to the claimant to show that he had made a good faith effort to search for employment was to comply with Rule 130.102(d)(5) and provide sufficient documentation of his efforts to obtain employment. Rule 130.102(e) sets out the requirement that an injured employee look for work every week and describes the documentation necessary to show a good faith effort to obtain employment. There was ample evidence in the record from which the hearing officer could determine that the claimant's job search efforts during the qualifying periods for the 11th, 12th, and 13th quarters were far short of the good faith effort required by the rules. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion for that of the hearing officer.

We affirm the decision and order of the hearing officer.

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Michael B. McShane  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge