APPEAL NO. 010737

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 resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 11th quarter, November 24, 2000, through February 21, 2001. The appellant (carrier) appealed and the claimant responded.

DECISION

As reformed herein, the hearing officer's decision is affirmed.

Finding of Fact No. 5 is reformed as follows to reflect the actual stipulation of the parties: The claimant reached maximum medical improvement [MMI] on April 3, 1997, with a 20% impairment rating [IR] as a result of the compensable injury.

The hearing officer did not err in determining that claimant is entitled to SIBs for the 11th quarter. Eligibility criteria for SIBs are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Rule 130.102(b) provides that an injured employee who has an IR of 15% or greater, and who has not commuted impairment income benefits (IIBs), is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work. There is no appeal of the hearing officer's finding that the claimant's unemployment during the qualifying period was a direct result of her impairment from her compensable injury.

The parties stipulated that the claimant was injured in the course and scope of her employment on _____; that MMI was reached on April 3, 1997, with a 20% IR; that the claimant did not commute IIBs; and that the qualifying period for the 11th quarter began on August 12, 2000, and ended on November 11, 2000. The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period.

It is undisputed that, due to the compensable injury, the claimant had a limited ability to work during the qualifying period. 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 Rule 130.102(e) to show that he or she has made a good faith effort to obtain employment. Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3), and (4), 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.

The hearing officer's finding that the claimant made a good faith effort to find employment commensurate with the claimant's limited ability to work during the qualifying period is supported by the work restrictions given by the claimant's treating doctor, the claimant's testimony, and the documentation provided with the claimant's Application for [SIBs] (TWCC-52). The TWCC-52 documents job searches every week of the qualifying period. On the one hand, the carrier contends that the claimant did not look for work within her restrictions, but on the other hand, the carrier contends that the claimant did not make a good faith effort to obtain employment because she notified potential employers of her work restrictions. Whether the claimant has made a good faith search for employment commensurate with the claimant's ability to work is a question of fact for the hearing officer to determine from the evidence presented. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995. The hearing officer's finding that the claimant cooperated with the carrier's "rehabilitation service," which, according to the evidence, actually calls itself a "disability management" company, is supported by the evidence, and, with regard to the qualifying period in issue, the carrier's vocational consultant testified that no help was provided to claimant in securing employment.

The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). The hearing officer resolves the inconsistencies and conflicts in the evidence. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are 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). The hearing officer's decision that the claimant is entitled to SIBs for the 11th quarter is supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The decision and order of the hearing officer as reformed are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge