

## APPEAL NO. 010840

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 January 12, 2001. The hearing officer determined that: (1) appellant/cross-respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 9th quarter; and (2) respondent/cross-appellant (carrier) is relieved of liability for a portion of 9th quarter SIBs because claimant did not file his Application for [SIBs] (TWCC-52) on time. Claimant appealed the determination regarding carrier's partial relief from liability, apparently on sufficiency grounds. Carrier responded that the hearing officer did not err in determining that the TWCC-52 was not filed until November 15, 2000. Carrier filed a cross-appeal, contending that claimant did not establish the good faith criterion. The file does not contain a response from claimant. The hearing officer's determination regarding carrier waiver was not appealed.

### DECISION

We affirm in part and reverse and render in part.

Claimant contends the hearing officer erred in determining that carrier is relieved of liability for payment of SIBs from October 17, 2000, through November 15, 2000. Claimant's TWCC-52 for the 9th quarter was due to be filed with carrier by October 10, 2000. The quarter started on October 17, 2000. The hearing officer determined that carrier received claimant's TWCC-52 on October 17, 2000, but that this did not constitute the filing of a TWCC-52 because it was incomplete. We disagree. Claimant's TWCC-52 was not so incomplete that it constituted the failure to file a TWCC-52. See Texas Workers' Compensation Commission Appeal No. 990856 (unpublished), decided June 7, 1999. The TWCC-52 was "incomplete" only because it did not list job searches for three weeks of the filing period, or from August 1, 2000, through August 21, 2000. At, and before, the benefit review conference on November 15, 2000, claimant submitted additional job searches that concerned that three-week period. He testified that he did not list these job searches on his TWCC-52, but had previously submitted these to his vocational rehabilitation counselor, thinking that the information would be forwarded to carrier. We conclude that the hearing officer erred in determining that claimant did not file his TWCC-52 until November 15, 2000. We reverse that determination and render a decision that claimant filed his TWCC-52 with carrier on October 17, 2000.

Carrier contends the hearing officer erred in determining that claimant made a good faith effort to search for work commensurate with his ability and that he is entitled to SIBs. Carrier asserts that some job searches could not be verified and that claimant "came up with" additional job searches only after carrier denied 9th quarter SIBs. Whether claimant made the job searches and was in good faith was a fact issue for the hearing officer to decide. We have reviewed the complained-of determinations regarding SIBs entitlement and good faith, and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We

conclude that the hearing officer's determinations 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).

We affirm that part of the hearing officer's decision and order that determined that claimant is entitled to SIBs for the 9th quarter. We reverse the hearing officer's determination that claimant filed his TWCC-52 on November 15, 2000, and render a decision that claimant filed his TWCC-52 with carrier on October 17, 2000. We reverse the determination that carrier is relieved of liability for payment for a portion of 9th quarter SIBs and render a decision that carrier is not relieved of liability.

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Michael B. McShane  
Appeals Judge