

APPEAL NO. 010904
FILED JUNE 13, 2001

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 April 20, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 12th through the 16th quarters and that the compensable injury of _____, does not extend to the claimant's low back. The claimant appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision is affirmed.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the 12th through the 16th quarters. The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the quarters in issue. Section 408.142(a)(4) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b)(2) (Rule 130.102(b)(2)). The claimant provided very little documentation of a job search and relied on his assertion of having no ability to work during the qualifying periods. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with his ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, 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.

There is conflicting evidence regarding the claimant's ability to work. The claimant's treating doctor and a referral doctor have reported that the claimant is completely disabled. Functional capacity evaluations done in 1999 and 2000 concluded that the claimant has some ability to work. A doctor who examined the claimant in 1998 and 1999 at the carrier's request also concluded that the claimant has some ability to work. The hearing officer is the judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer stated in his Statement of the Evidence that the claimant has some ability to work and found that during the relevant qualifying periods, the claimant failed to make a good faith effort to seek employment. The hearing officer's decision that the claimant is not entitled to SIBs for the 12th through the 16th quarters is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer did not err in determining that the claimant's compensable injury of _____, does not extend to the claimant's low back (the parties stipulated that the

compensable injury does not extend to reflex sympathetic dystrophy and post-traumatic stress disorder). The medical records reflect that the claimant has an 18% impairment rating consisting of impairment of the cervical spine and left shoulder. There is conflicting evidence as to whether the claimant injured his low back on _____, when he sustained his compensable injury. The claimant's treating doctor indicated that the claimant's low back condition is related to his compensable injury; whereas, the doctor that examined the claimant at the carrier's request concluded that the claimant's low back condition is not related to the claimant's compensable injury. The hearing officer reviewed the extensive medical records in evidence and made a finding that there is no causal connection between the claimant's compensable injury of _____, and the claimant's low back problems. As the trier of fact, the hearing officer resolves conflicts in the evidence and determines what facts have been established from the evidence presented. The hearing officer's decision that the claimant's compensable injury does not extend to the claimant's low back is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge