

APPEAL NO. 010942

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on April 24, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first and second quarters. The claimant appeals these determinations on evidentiary sufficiency grounds. The respondent (carrier) urges the sufficiency of the evidence to support our affirmance.

DECISION

Affirmed as reformed.

We note at the outset that the tape recorded record was of very poor quality (voices breaking up) and nearly necessitated a remand for reconstruction of the record. We further note that in Finding of Fact No. 1D, the hearing officer erroneously stated the date of injury as October 19, 2000, when the parties stipulated the date as \_\_\_\_\_. We reform that finding accordingly.

The hearing officer did not err in finding that during the qualifying periods for the first and second quarters, August 10 through November 8, 2000, and November 9, 2000, through February 7, 2001, the claimant did not attempt in good faith to obtain employment commensurate with his ability to work and in concluding that the claimant is not entitled to SIBs for the first and second quarters.

The statutory requirements for entitlement to SIBs are found in Section 408.142 and include the requirement that the claimant make a good faith attempt to obtain employment commensurate with his ability to work. The claimant's applications for SIBs reflect that during the two qualifying periods at issue he earned no wages and made no job searches. Though he made no specific findings of fact concerning any of the elements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)), despite the urging of the Appeals Panel (*see, e.g.* Texas Workers' Compensation Commission Appeal No. 992692, decided January 20, 2000), the hearing officer does indicate in his discussion that the claimant did not look for work and relied on being "enrolled and cooperating with the Texas Rehabilitation Commission [TRC] for his reason for not looking for work." According to the claimant, he was tested by the TRC and cooperated with the TRC and, after the close of the second quarter filing period, attended and completed a truck driving training course. Rule 130.102(d)(2) requires enrollment in and satisfactory participation in a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel, an appellate-

reviewing tribunal, will not disturb the challenged factual determinations of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

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

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

CONCUR IN THE RESULT:

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Gary L. Kilgore  
Appeals Judge