

APPEAL NO. 010978
FILED JUNE 8, 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 12, 2001. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the sixth quarter.

The appellant (carrier) appeals, asserting that the claimant's job contacts were not in good faith with the realistic expectations of employment. The claimant responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement 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 impairment rating (IR) of 15% or greater, and who has not commuted any 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.

The parties stipulated that the claimant sustained a compensable injury on _____; that the claimant has a 16% IR; that IIBs have not been commuted; and that the qualifying period for the sixth quarter was from August 26 through November 24, 2000. At issue in this case is whether the claimant attempted in good faith to obtain employment commensurate with his ability to work during the qualifying period. Section 408.142(a)(4); Rule 130.102(b)(2). (Although the carrier appealed the direct result finding, we note that the carrier stipulated to that fact (page 6 of the transcript) and we will not address that element further.)

Attached to the claimant's Application for [SIBs] (TWCC-52) are some 74 job contacts which the claimant asserts he made during every week of the qualifying period. The claimant also testified, without contradiction, that on November 18 or 19, 2000, one of his job contacts called him back and offered him a job beginning November 27, 2000 (three days after the end of the qualifying period). The claimant testified that he has continued to work in the offered position. The carrier attacks the hearing officer's decision on the basis of the quality of the claimant's job search efforts.

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. The factors listed in Rule 130.102(e)(1) through (11) are factors that the hearing officer is to consider in determining good faith which is a factual determination for the hearing officer to resolve.

The hearing officer's decision is sufficiently supported by the evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge