

APPEAL NO. 010995  
FILED JUNE 22, 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 (CCH) 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 fourth, fifth, and sixth quarters. The claimant appealed and the respondent (self-insured) 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 fourth, fifth, and sixth quarters. 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 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)). It is undisputed that the claimant did not work nor look for work during the relevant qualifying periods. The claimant testified that she had no ability to work during the relevant qualifying periods. Rule 130.102(d)(4) 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 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.

It is undisputed that the claimant sustained a compensable back injury and has an impairment rating of 29% or more. There is conflicting evidence regarding the claimant's ability to work. The claimant's treating doctor reported that the claimant is unable to do any type of work due to low back pain and spinal stenosis. Her former treating doctor also reported that she cannot do any type of work. The hearing officer determined that the medical reports did not specifically explain how the claimant's compensable injury caused the claimant to have a total inability to work during the relevant qualifying periods. The hearing officer determined that functional capacity evaluations showed that the claimant had some ability to work during the relevant qualifying periods. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer found that the claimant had the ability to perform some work during the relevant qualifying periods and that the claimant did not in good faith attempt to obtain employment commensurate with her ability to work during the relevant qualifying periods. The hearing

officer concluded that the claimant is not entitled to SIBs for the fourth, fifth, and sixth quarters. The hearing officer's decision 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.

Since the parties stipulated that venue was proper in the field office where the CCH was held, we find no merit with regard to the claimant's assertion that venue was not proper at that field office.

The hearing officer's decision and order are affirmed.

---

Robert W. Potts  
Appeals Judge

CONCUR:

---

Judy L. S. Barnes  
Appeals Judge

---

Thomas A. Knapp  
Appeals Judge