

APPEAL NO. 011003
FILED JUNE 7, 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 4, 2001. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 13th, 14th, and 15th quarters.

The claimant appealed, asserting that his doctor had not released him to return to work and that he had made a good faith effort to seek employment but "he didn't write all them [job contacts] down." The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back injury on _____; that the claimant has at least a 15% impairment rating; and that the qualifying period for the 13th quarter was from January 11, 2000, through April 11, 2000, with the qualifying period for the 14th quarter being April 12, 2000, through July 11, 2000, and the qualifying period for the 15th quarter being from July 12, 2000, through October 10, 2000.

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). At issue was whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the 13th, 14th, and 15th quarters. Good faith effort may be established by meeting the requirements of various portions of Rule 130.102(d). The claimant asserts entitlement to SIBs based on a total inability to work and, in the alternative, a good faith effort to seek employment. 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. The hearing officer found that the claimant had an ability to work at a sedentary level throughout the qualifying periods. Although no specific medical narrative is identified to meet the requirements of Rule 130.102(d)(4), the report dated August 25, 1999, of Dr. K, the claimant's treating doctor, comes closest. That report states that the claimant "not return to work, as this would likely worsen his injury" and that:

Certainly, any excessive strain placed on his back would be detrimental to [claimant's] health. Heavy lifting, repetitive bending or twisting would likely worsen his situation.

* * * *

[and that certain medications] would also likely interfere with [claimant's] ability to function.

* * * *

Presently, because of [claimant's] depression, as well as his pain, his concentration is extremely limited, and does not allow him to focus on one activity for an extended period of time. Furthermore, he is unable to sit in one place for extended periods, secondary to back pain. I also believe that it is unlikely that the patient could find employment, with his physical limitations.

On the other hand, a report dated August 10, 2000 (during the 15th quarter qualifying period) from Dr. B, a Texas Workers' Compensation Commission independent medical examination doctor concludes that "I would think [claimant] should be able to perform some type of sedentary type of activity, though his narcotic dependence and chronic pain syndrome would certainly interfere with a productive life style." The hearing officer commented that "there are other records [Dr. B's report] that show some ability to work, the claimant cannot meet all the requirements of Rule 130.102(d)(4)." The hearing officer's determination on this factor is sufficiently supported by the evidence.

A good faith effort to obtain employment may also be met by meeting the requirements of Rule 130.102(e) which provide 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 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 claimant's documented job contacts for the 13th quarter show no job contacts during the first two weeks (from January 11 through January 27, 2000) or the last week after March 31, 2000, to the end of the qualifying period on April 11, 2000. No job contacts at all were submitted for the 14th quarter qualifying period and although some 75 job contacts were submitted for the 15th quarter qualifying period none have any dates. The claimant testified some of those contacts may have been made during the 14th quarter qualifying period. The hearing officer found that the claimant failed to provide sufficient documentation to meet the requirements of Rule 130.102(e) for the quarters at issue. That determination is sufficiently supported by the evidence.

The hearing officer heard and weighed the evidence and her determination on the issue is 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).

The hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge