

APPEAL NO. 011019
FILED JUNE 21, 2001

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 16, 2001, the hearing officer resolved the disputed issues by determining that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 13th quarter; that because the claimant's application for SIBs was not received until May 8, 2000, the claimant shall not receive SIBs for the period between April 29, 2000, and May 8, 2000; and that because the appellant (carrier) filed a dispute of entitlement to SIBs for the 13th quarter with the Texas Workers' Compensation Commission within 10 days of receiving the claimant's application, the carrier did not waive its right to contest entitlement to SIBs. The carrier has appealed the determination that the claimant made a good faith effort to seek employment during the 13th quarter filing period, based on having no ability to work, and that he is thus entitled to SIBs. The file does not contain a response from the claimant. The hearing officer's determinations of the late application and carrier waiver issues have not been appealed and have thus become final. Section 410.169.

DECISION

Affirmed.

The statutory requirements for entitlement to SIBs are found in Section 408.142. *And see* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). Rule 130.102(d) addresses the "good faith" criterion. 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 did not err in determining that during the qualifying period the claimant made a good faith attempt to obtain employment commensurate with his ability to work based on the medical evidence that he had no ability to work. To be sure, the evidence before the hearing officer was in conflict. The carrier relies on evidence that the claimant has the ability to do "paperwork" at home and has the capability of going into business for himself. The hearing officer relies on the reports of Dr. K to support his no ability to work determination. In our view, Dr. K's reports of July 3, 2000, and December 26, 2000, are minimally probative in satisfying Rule 130.102(d)(4). The carrier also complains that it could not obtain a record showing an ability to return to work because the claimant failed to report for a required medical examination on three occasions. We can only observe that the carrier's remedy in this regard is not found in Section 408.142 or in Rule 130.102. While another fact finder may well have drawn different inferences from the evidence, we cannot say that the challenged factual determinations are 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); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge