

APPEAL NO. 011096
FILED JUNE 20, 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 19, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 12th, 13th, 14th, and 15th quarters. The claimant appealed on a sufficiency of the evidence basis, urging reversal. The respondent (carrier) urged 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 (left knee) injury on _____; that the claimant has a 26% IR; that IIBs have not been commuted; and that the qualifying period for the 12th quarter began on January 3, 2000, and that the qualifying period for the 15th quarter ended on January 1, 2001. The parties also stipulated that the claimant's unemployment during the periods at issue was "a direct result of Claimant's impairment rating [sic, should be 'impairment from the compensable injury']." 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 periods. Section 408.142(a)(4); Rule 130.102(b)(2).

Attached to the claimant's Application for [SIBs] (TWCC-52) are some 50 job contacts made during the 12th quarter qualifying period (and several more that fell outside the qualifying period), 63 job contacts during the 13th quarter qualifying period, 42 job contacts during the 14th quarter qualifying period, and 138 job contacts during the 15th quarter qualifying period. The claimant cannot read or write in any language and speaks only Spanish. Many of the contacts were to restaurants and other establishments seeking light cleaning 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. 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 commented that the claimant did not look for employment every week of the 12th and 14th quarter qualifying periods and commented on the quality of the other quarter job searches. The hearing officer also commented that the claimant had not been to the Texas Rehabilitation Commission although arguably she had been referred there. The claimant testified that she was attending physical therapy for portions of the 14th and 15th quarter qualifying periods.

Good faith is a question of fact for the hearing officer. From our review of the evidence, we cannot conclude that the determination of the hearing officer that the claimant did not make a good faith effort to obtain employment was so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Employers Casualty Company v. Hutchinson, 814 S.W.2d 539 (Tex. App.-Austin 1991, no writ).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge