

APPEAL NO. 011108
FILED JUNE 26, 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 23, 2001. The hearing officer found that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for his third and fourth quarters of eligibility, meeting the good faith job search requirement as a result of being employed in each quarter in a job commensurate with his ability to work, although he was underemployed.

The appellant (carrier) has appealed this determination, arguing evidentiary points on the good faith search, as well as asserting the lack of proof that the claimant filed completed SIBs applications. The claimant responds and asks that the decision be affirmed.

DECISION

Because the audiotape of the CCH is not completely audible, we must remand for reconstruction of the record. There was no court reporter in attendance, which may have obviated the need for a remand, and although some questions can be heard, the testimony is inaudible on some matters raised in the appeal. This is due to a low hum in the recorder as well as the fact that the claimant appears to have been at a greater distance from the microphone than the attorneys. In any case, the record cannot be reviewed or considered adequately as required by the 1989 Act.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge