

APPEAL NO. 011149
FILED JULY 03, 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 26, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second and third quarters. The claimant appealed and the respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

On appeal, the claimant asserts that he had a total inability to work in any capacity during the qualifying periods for the second and third quarters of SIBs. Eligibility criteria for SIBs entitlement is 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(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 record shows 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.

Conflicting evidence was presented as to the claimant's ability to work during the qualifying periods for the second and third quarters of SIBs. The claimant presented documentation from his treating doctor which indicates that he had no ability to work due to the compensable injury. The claimant testified that he would perform light duties in the kitchen of a local restaurant in exchange for food. Dr. C, who examined the claimant at the request of the carrier, opined that the claimant could return to work with restrictions.

The hearing officer determined that the claimant had some ability to work in the qualifying periods for the second and third quarters; that the claimant failed to make a good faith effort to seek employment commensurate with his ability to work; and that the claimant is not entitled to SIBs for the second and third quarters. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). The challenged determinations are supported by sufficient evidence and our review does not demonstrate that they are so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Therefore, no sound basis exists for us to reverse the hearing officer's decision on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Although another fact finder may well have drawn different inferences from the evidence, which would have supported a different result, that does not permit us to disturb the hearing officer's decision. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge