

APPEAL NO. 011204
FILED JULY 10, 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 May 1, 2001. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 19th quarter. The appellant (self-insured) appeals this determination, contending that it is against the great weight and preponderance of the evidence. The claimant urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained an injury on _____; that the self-insured accepted liability for the injury; that the claimant had an 18% impairment rating (IR); that the claimant has not commuted any portion of his impairment income benefits (IIBs); and that the 19th quarter began on December 27, 2000, and ended on March 27, 2001. Though not stipulated, the parties referred to the 19th quarter qualifying period as the period from September 14, 2000, to December 13, 2000.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBs when the IIBs period expires if the employee has: (1) an IR of at least 15%; (2) not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; (3) not elected to commute a portion of the IIBs; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)) provides that 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. This rule goes on to list a number of factors which may be considered in determining whether a good faith effort was made including the number and types of jobs sought, the existence of applications or resumes to document the job search efforts, any job search plan, and the amount of time spent in attempting to find employment.

The issue on appeal is the sufficiency of the evidence to support the hearing officer's "good faith attempt" determination. The hearing officer found that the claimant looked for work in each week during the qualifying period; that his SIBs application listed only one job contact per week; that he sought positions which were within his educational abilities; that he made newspaper and computer searches for jobs, including registering with the Governor's Job Bank; and that he received job counseling through a Texas Rehabilitation Commission program. The hearing officer concluded that the claimant made a good faith effort to obtain employment commensurate with his ability to work and is entitled to SIBs for the 19th quarter.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual determinations of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. 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:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge