APPEAL NO. 011208
FILED JULY 09, 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 9, 2001. With regard to the only issue before him, the hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the first quarter.

The appellant (carrier) appealed both the good faith and direct result requirements based on the premise that the claimant had submitted inadequate documentation of job searches with his initial Application for [SIBs] (TWCC-52) and attacks the claimant's job searches based on the quality of the search efforts. The claimant responds, urging 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 had sustained a compensable injury, that the claimant had a 15% or greater IR, and that IIBs were not commuted. There was no stipulation or finding regarding the qualifying period; however, no one challenged the dates of the qualifying period listed on the TWCC-52, which were that the first quarter qualifying period was from June 18, 2000, through September 16, 2000.

As part of the claimant's initial filing submitted to the Texas Workers' Compensation Commission (Commission) for its initial determination were listings of 64 job contacts which documented several contacts each week, listing the potential employer's business address with a telephone or "fax" number, and listing the position applied for as "management." (The claimant had been a restaurant manager for a restaurant chain at the time of his injury.) After submitting his initial filing, the claimant had supplemented his application by submitting rejection letters, job application acknowledgments, and other verification that he had in fact made the contacts listed. The claimant also submitted notes that he had made about his contacts and a copy of his resume and cover letter. The carrier submitted testimony of its "vocational case manager," who testified that, based on a sampling of the claimant's job contacts, she was unable to verify any job contacts.

The carrier argues that the job verification material the claimant submitted as an addendum should have been submitted with the initial documentation and that submitting that information as an addendum makes the TWCC-52 filing untimely. Otherwise, the carrier attacks the quality of the job contacts (*i.e.*, that none were in person, that the claimant only listed "management" positions, and that the claimant's resume lists that he has a "Disability Injury," etc).

Rule 130.102(e) provides that "[e]xcept as provided in subsection (d)(1), (2), (3), and (4) of this section, an injured employee who is able 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." We reject the carrier's assertion that the initial filing, which gives the date of the contact, the name of the contact, the name of the business, how the contact was made, the person contacted, the job applied for, and the results of the job contact, was inadequate documentation of the claimant's job search efforts. Further, the hearing officer could have considered the claimant's job contact verification evidence as an effort to rebut the carrier's vocational case manager's "sample" verification testimony. The hearing officer did not err in admitting the claimant's job verification on the basis that it had not been sent to the Commission with the initial filing.

Regarding the carrier's arguments about the quality of the claimant's job search, that is a matter solely within the province of the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), 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)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings 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.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge