

APPEAL NO. 011211
FILED JULY 06, 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 3, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 19th quarter and that the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c). In her appeal, the claimant essentially argues that the hearing officer's determination that she is not entitled to SIBs for the 19th quarter is against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the 19th quarter, which ran from November 1, 2000, to January 30, 2001, and had a corresponding qualifying period of July 20 to October 18, 2000. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) 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 returned to work in a position which is relatively equal to the injured employee's ability to work." 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." In this instance, it is undisputed that the claimant returned to part-time work at a fast food restaurant for a portion of the qualifying period. However, the hearing officer was not persuaded by the evidence that she was limited to part-time work because of her impairment. Thus, he determined that she did not satisfy the good faith requirement under Rule 130.102(d)(1). In addition, the hearing officer determined that the claimant did not satisfy the good faith requirement under Rule 130.102(e) because she did not look for work in addition to her part-time work. The hearing officer was acting within his province as the fact finder under Section 410.165(a) in making the challenged determinations and our review of the record does not reveal that those determinations are not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. As such, we will not disturb them, or the determination that the claimant is not entitled to SIBs for the 19th quarter, 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).

The claimant did not appeal the determination that she was not entitled to SIBs for the 16th, 17th, and 18th quarters of SIBs. Given our affirmance of the determination that the claimant is not entitled to SIBs for the 19th quarter, we likewise affirm the determination that the claimant has permanently lost entitlement to SIBs pursuant to Section 408.146(c).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge