

APPEAL NO. 011321
FILED JULY 25, 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 in two sessions, on April 17, 2001, and May 22, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second, third, and fourth quarters. In her appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the qualifying period for the second quarter was from May 25 to August 23, 2000; that the qualifying period for the third quarter was from August 24, to November 11, 2000; and that the qualifying period for the fourth quarter was from November 23, 2000, to February 21, 2001. 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). At issue in this case is whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the relevant qualifying periods.

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. 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 records show that the injured employee is able to return to work.

In the instant case, the claimant failed to look for work every week of the qualifying period for the second quarter, and did not look for work at all during the qualifying periods for the third and fourth quarters. The claimant asserts that she had a total inability to work during these time periods when she did not conduct a job search. The hearing officer determined that the claimant did not provide a narrative from a doctor which specifically explains how her compensable injury caused a total inability to work and that there are other records that show the claimant had some ability to work during the time periods in question. Those determinations are not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Thus, no sound basis exists for us to reverse the challenged determinations, or the determination that the claimant is not entitled to SIBs for

the second, third, and fourth quarters, 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).

In her appeal, the claimant asserts error in the hearing officer's admission and consideration of a videotape offered by the carrier. The claimant did not object to the admission of the videotape at the hearing and, as such, she did not preserve any error associated with its admission.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge