

APPEAL NO. 011352
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 on May 15, 2001. On the sole issue before him, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the second quarter. The claimant appeals the hearing officer's determination on sufficiency grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was not entitled to second quarter SIBs. The claimant had the burden to prove that he made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period. Texas Workers' Compensation Commission Appeal No. 941490, decided December 19, 1994; Sections 408.142(a)(4) and 408.143(a)(3); Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant asserted that he satisfactorily participated in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC). Whether the claimant satisfactorily participated in a full-time vocational rehabilitation program is a fact issue for the hearing officer. Texas Workers' Compensation Commission Appeal No. 000001, decided February 16, 2000. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, the hearing officer could conclude that the claimant did not participate in a full-time, TRC-sponsored vocational rehabilitation program during the qualifying period for the second quarter.

The claimant also asserted that he made a good faith job search each week of the qualifying period in which he had an ability to work. Rule 130.102(e) provides that an injured employee 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 have held that the documentation requirement of Rule 130.102(e) is mandatory, and undocumented employment contacts may not be considered in arriving at the good faith determination. Texas Workers' Compensation Commission Appeal No. 000505, decided April 20, 2000. It was undisputed that the claimant did not document a job search for the 6th week (July 5, 2000, through July 11, 2000), and the 12th week (August 16, 2000, through August 22, 2000), of the qualifying period for second SIBs quarter. The claimant asserted that had a total inability to work for these weeks and, therefore, was not required to search for a job. Rule 130.102(d)(4) provides that an employee has made a good faith effort to obtain employment commensurate with his 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 view of the claimant's functional capacity evaluation, the hearing officer could infer that the claimant had an ability to perform light duty for each week of the qualifying period. The hearing officer's determination that the claimant is not entitled to second quarter SIBs is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge