

APPEAL NO. 011358  
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 29, 2001. With regard to the only issue before her, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the seventh quarter. The claimant appealed, contending that he had made a good faith effort to find work within his restrictions. The respondent (carrier) responded, 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). The SIBs criterion in dispute was whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the seventh quarter. The hearing officer's finding that the claimant's unemployment during the applicable quarter was a direct result of the claimant's impairment has not been appealed and will not be discussed further.

The parties stipulated to various jurisdictional elements, including that the qualifying period for the seventh quarter was from November 30, 2000, through February 28, 2001. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, 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.

The claimant listed some 37 job contacts during the qualifying period with several being repeats of that qualifying period and others, apparently, repeats of prior quarters. The claimant also testified of having been in contact with the Texas Workforce Commission and the Texas Rehabilitation Commission; however, those agencies have been unable to assist him because he has only a third grade education in Mexico and is unable to speak, read, or write English. The hearing officer commented that the claimant "spent very little time searching for work," that he confined his job searches to the small community where he lives, and that he sought work in other communities "when he had money to purchase enough gasoline." A surveillance report indicated that the claimant was able to lift and carry a small child while walking across the yard.

Under Rule 130.102(e), in determining whether the claimant made a good faith effort to obtain employment commensurate with his ability to work, the hearing officer could consider, among other things, the number of jobs applied for, the amount of time spent in attempting to find employment, and any job search plan by the injured employee. The issue in dispute presented a question of fact for the hearing officer to resolve based on the

evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer was not persuaded that the claimant's efforts amounted to a good faith effort to obtain employment commensurate with the claimant's ability to work. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge