

APPEAL NO. 011468  
FILED AUGUST 01, 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 June 7, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the seventh quarter because she failed to document a job search for the seventh week of the qualifying period. The claimant appeals the hearing officer's determination on sufficiency grounds. The respondent (carrier) urges affirmance, asserting not that the claimant failed to make a documented job search, but that the claimant's job search efforts did not rise to the level of good faith.

DECISION

Reversed and remanded.

The hearing officer erred in determining that the claimant was not entitled to seventh quarter SIBs because she failed to document a job search for the seventh week of the qualifying period. Sections 408.142 and 408.143 provide that an employee continues to be entitled to SIBs after the first compensable quarter if the employee (1) has not returned to work or has earned less than 80 percent of her average weekly wage as a direct result of the impairment, and (2) has in good faith sought employment commensurate with her ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (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 that 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.

The hearing officer found that the claimant failed to document a job search for the week beginning Wednesday, December 27, 2000, and ending on Tuesday, January 2, 2001. A careful review of Claimant's Exhibit No. 1 (Application for [SIBs] (TWCC-52) with attachments), which was admitted into evidence without objection, reveals a documented job search for January 2, 2001, the last day of the week in question. Therefore, the hearing officer's determination that the claimant was not entitled to seventh quarter SIBs because she failed to document a job search for the seventh week (December 27, 2000, through January 2, 2001) of the qualifying period is 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). Accordingly, the hearing officer's determination is reversed.

Because the hearing officer did not address the issue of whether the claimant's job search constituted a good faith effort to obtain employment in view of the factors set out in Rule 130.102(e)(1) to (11), we remand this proceeding for specific fact findings with regard

to whether the claimant's job search constituted a good faith effort to obtain employment commensurate with her abilities, and for reconsideration of whether the claimant is entitled to seventh quarter SIBs.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 working days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 (amended June 17, 2001). See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Judy L.S. Barnes  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge