

APPEAL NO. 011561  
FILED AUGUST 16, 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 commenced June 7, 2001, with the record closing June 15, 2001. With regard to the issues before her, the hearing officer determined that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth quarter, beginning December 16, 2000, and ending March 16, 2001, and that the claimant is entitled to SIBs for the seventh quarter, beginning March 17, 2001, and ending June 15, 2001.

The appellant (carrier) appeals the hearing officer's decision on seventh quarter SIBs on the basis that the claimant did not return to work in a position relatively equal to her ability to work, that the claimant did not seek employment each week of the qualifying period, and that the claimant failed to provide appropriate supporting documentation to establish a self-employed business during the qualifying period in question. The file does not contain a response from the claimant.

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). At issue in this case is whether the claimant made the requisite good faith effort to obtain employment commensurate with her ability to work, whether the claimant sought employment every week of the qualifying period, and whether the claimant provided documentation to show that she had established a self-employed business for the seventh quarter qualifying period. The hearing officer's findings that the claimant's underemployment during the applicable quarter was a direct result of the impairment from the compensable injury has not been appealed and will not be addressed further.

The parties stipulated that the claimant is not entitled to SIBs for the sixth quarter; that the qualifying period for the seventh quarter began December 3, 2000, and ended March 3, 2001; and, that if the claimant is entitled to SIBs for the seventh quarter, her monthly payments would be \$1,285.22.

Rule 130.102(d)(1) provides that an injured employee will be determined to have 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. The claimant had prior work experience in the jewelry business and at office managing. During the last week of the qualifying period for the seventh quarter, the claimant obtained employment as a receptionist for a law firm.

The carrier argues that the claimant did not seek employment within her restrictions in a position relatively equal to her ability to work for six hours per day. The hearing officer determined that the claimant obtained employment in a part-time capacity as a receptionist, that this job was within her restrictions, and that the claimant was trained for this job. We have held that the weekly job search requirement of Rule 130.102(e) is not applicable in cases where the claimant satisfies the good faith requirement under Rule 130.102(d)(1) by working in a job relatively equal to the claimant's ability to work in the qualifying period. Texas Workers' Compensation Commission Appeal No. 000608, decided May 10, 2000. See also Texas Workers' Compensation Commission Appeal No. 000470, decided April 10, 2000. The hearing officer determined that the claimant made a good faith effort to seek employment during the qualifying period for the seventh quarter. The hearing officer's decision is supported by sufficient evidence.

We hold that the hearing officer did not err in finding that the claimant had satisfied the statutory requirement of making a good faith effort to obtain employment commensurate with the claimant's ability to work. The hearing officer weighed the credibility of the evidence, and the hearing officer's determination on the issues before her 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, 176 (Tex. 1986).

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

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Philip F. O'Neill  
Appeals Judge

---

Robert W. Potts  
Appeals Judge