

APPEAL NO. 011591
FILED AUGUST 22, 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 14, 2001. With respect to the issue before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second quarter. In his appeal, the claimant essentially argues that the hearing officer's determinations that he did not make a good faith effort to look for work commensurate with his ability to work and that he is not entitled to SIBs for the second quarter are against the great weight of the evidence. The claimant also asserts error in the hearing officer's consideration of medical reports that were "far removed from the qualifying period of the second quarter that they have no reasonable relationship to functional ability." In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that he was assigned a 17% impairment rating for his compensable injury; that he did not commute his impairment income benefits; and that the second quarter ran from March 8 to June 6, 2001, with a corresponding qualifying period of November 24, 2000, to February 23, 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).

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. In the instant case, the hearing officer determined that the claimant did not satisfy the good faith requirement by conducting a good faith job search. The hearing officer was not persuaded that the claimant's job search efforts were conducted in good faith in an attempt to return to work. The hearing officer likewise was not convinced that the claimant's efforts of contacting the Texas Rehabilitation Commission (TRC) and discussing a rehabilitation program demonstrated good faith. It is important at this point to note that the claimant did not assert that he had satisfied the good faith requirement under Rule 130.102(d)(2) through satisfactory participation in a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period for the second quarter. Rather, his cooperation with the TRC was urged as a factor to be considered in considering whether he acted in good faith under Rule 130.102(e). Our review of the record also does not reveal that the hearing officer's determination that the claimant did not make a good faith effort to look for work commensurate with his ability to work in the qualifying period is 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 that determination, or the determination that the claimant is not entitled to SIBs for the second quarter, 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 his appeal, the claimant asserts error in the hearing officer's admission and consideration of medical evidence from outside the qualifying period. The claimant did not object to any of the carrier's evidence at the hearing; thus, he has not preserved error for purposes of appeal. However, we note that we have previously stated that evidence from outside the qualifying period is admissible and can be considered by the hearing officer. If anything, the fact that evidence is remote in time from the qualifying period, affects the weight and not the admissibility of that evidence. We would further note that the hearing officer commented on the lack of medical evidence of a worsening of the claimant's condition since the earlier report.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge