

APPEAL NO. 011702  
FILED AUGUST 29, 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 resolved the disputed issues by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 9th and 10th quarters. The claimant appealed, asserting that she made a good faith job search during the qualifying period for the 9th quarter, and that she had a total inability to work during the qualifying period for the 10th quarter. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that the compensable injury resulted in a 20% impairment rating; that the claimant did not commute her impairment income benefits (IIBs); that the qualifying period for the 9th quarter of SIBs began on January 18, 2000, and ended on April 18, 2000; that the 9th quarter of SIBs began on May 2, 2000, and ended on July 31, 2000; that the qualifying period for the 10th quarter of SIBs began on April 19, 2000, and ended on July 18, 2000; and that the 10th quarter of SIBs began on August 1, 2000, and ended on October 30, 2000. It was not disputed that during the relevant time periods, the claimant was not employed in any capacity, and that she was not enrolled in, nor satisfactorily participating in, a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission.

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 satisfied the good faith job search requirement for entitlement to SIBs during the qualifying periods for the 9th and 10th quarters. Rule 130.102(b)(2) provides that an injured employee who has met all of the other eligibility requirements is entitled to SIBs for a given quarter if he or she has also made a good faith effort to obtain employment commensurate with the employee's ability to work. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from the 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. 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 hearing officer did not err in determining that the claimant is not entitled to SIBs for the 9th quarter. The claimant testified that she felt she could work in some capacity during the qualifying period for the 9th quarter of SIBs, and that all of her job search efforts during the qualifying period for the 9th quarter of SIBs were documented on her Application for [SIBs] (TWCC-52). The hearing officer determined that the claimant did not seek employment every week of the qualifying period for the 9th quarter as required by Rule 130.102(e), and, therefore, she is not entitled to SIBs for the 9th quarter. The hearing officer's decision is supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Accordingly, no sound basis exists for us to disturb the hearing officer's determination of nonentitlement to SIBs for the 9th quarter on appeal.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the 10th quarter. The claimant asserted that she had a total inability to work during the qualifying period for the 10th quarter, and she made no job contacts. The hearing officer determined that the claimant did not supply a narrative from a doctor which specifically explains how her compensable injury causes a total inability to work, and that other records exist which show the claimant had some ability to work. The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer's determination is supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

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Michael B. McShane  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge