

APPEAL NO. 011762
FILED SEPTEMBER 12, 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 22, 2001. With regard to the issue before him, the hearing officer concluded that the respondent (claimant herein) was entitled to supplemental income benefits (SIBs) for the 11th quarter. The appellant (carrier herein) files a request for review, challenging a number of the findings of the hearing officer and arguing that the claimant was not entitled to SIBs because she failed to make a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the 11th quarter. The claimant responds that she made a good faith effort to find a job.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

An employee is entitled to [SIBs] if on the expiration of the impairment income benefit [IIBs] period computed under Section 408.121(a)(1) the employee:

- (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;
- (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
- (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
- (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

The hearing officer found that the claimant made a good faith effort to seek employment during the qualifying period for the 11th compensable quarter. We have previously held that the question of whether the claimant made a good faith job search is a question of fact. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to

resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust and we do not find it to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

As far as the specific factual finding which the carrier challenges, our review of the record shows that there was conflicting evidence concerning these matters. Applying our standard of review, these factual findings were sufficiently supported by the evidence. While the carrier argues that the hearing officer considered inappropriate factors in finding the claimant made a good faith search, we note that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)) permits the hearing officer to consider a wide variety of factors in making this determination, including "any other relevant factor."

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **STATE FARM FIRE AND CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**RON DAVIS
8900 AMBERGLEN BLVD.
AUSTIN, TEXAS 78729-1110.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeal Judge