APPEAL NO. 011787
FILED SEPTEMBER 21, 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 July 3, 2001. She determined that respondent (claimant) is entitled to supplemental income benefits (SIBs) for the sixth compensable quarter. Appellant (carrier) contends that the hearing officer erred in determining that claimant is entitled to SIBs. Claimant urges affirmance.

DECISION

We affirm.

Carrier contends that the hearing officer erred in determining that claimant satisfied the good faith requirement for SIBs eligibility. The hearing officer found that, during the qualifying period for the sixth compensable quarter, claimant returned to work part time in a position relatively equal to his ability to work, thereby satisfying the good faith requirement. Carrier notes that claimant is working only part time and complains that in considering whether claimant was able to work full time, the hearing officer considered medical records that were created after the qualifying period had ended. Carrier also complains that claimant's medical providers could not have known that he sought work in addition to his part-time job. The qualifying period was from December 28, 2000, to March 28, 2001. It is true that the May 25, 2001, letters from Dr. P and Dr. G saying that claimant can work only two to three hours per day were written a few months after the qualifying period. Regarding claimant's condition prior to the qualifying period, in a March 29, 2000, functional capacity evaluation (FCE), a physical therapist who evaluated claimant stated, "By the end of the FCE it became obvious to the examiner that [claimant] would have great difficulty in sucessfully [sic] performing these job duties consistently on a daily basis for a full-day or even a half-day schedule." The physical therapist noted that claimant was classified as able to perform light duty, but said it is "impractical to assume he is a candidate for [returning to work] at this time." The hearing officer's determinations in this regard are 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). We further note that whether claimant did or did not tell his medical providers about other jobs he sought was a fact issue for the hearing officer to consider. We perceive no error in this regard.

Carrier notes that there was evidence that claimant sought a second job at some point and worked longer than three hours per day after the qualifying period ended. Carrier contends that this shows that claimant was able to perform full-time work during the qualifying period. However, this evidence was for the hearing officer to consider in determining claimant's work abilities and whether claimant had returned to work in a position that was relatively equal to his ability to work. These issues presented fact issues for the hearing officer to consider. She considered the evidence and apparently determined

that claimant was not able to perform full-time work during the qualifying period. The hearing officer's determinations in this regard are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

Carrier also argues that because claimant has not sought United States citizenship, and because he cannot receive the services of the Texas Rehabilitation Commission (TRC) unless he is a citizen, he has not met the good faith criterion for SIBs eligibility. We first note that claimant contacted the TRC and sought TRC-related services. The hearing officer could find from the evidence that claimant did not fail to cooperate with the TRC. Carrier contends that, because claimant did not become a United States citizen and could not, therefore, receive TRC services, he "intentionally" refused TRC services. However, given the evidence of claimant's contacts with the TRC, the hearing officer could find that claimant did not intentionally refuse the services of the TRC. We further note that under Section 406.092(a) an employee's status as an alien whose entry into the United States may have been contrary to immigration laws does not in itself preclude the receipt of benefits under the 1989 Act. This is consistent with prior Texas workers' compensation law, *see* Commercial Standard Fire and Marine Company v. Galindo, 484 S.W.2d 635 (Tex. Civ. App.-El Paso 1972, writ ref'd n.r.e.). *See also* 1A LARSON, WORKMEN'S COMPENSATION LAW Sec. 35.20, for the general proposition that ". . . illegal entry into this country does not deprive an alien of compensation rights." Additionally, we note that the hearing officer found that claimant met the good faith SIBs requirement by returning to work relatively equal to his ability to work. *See* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)). In addition to working within his restrictions during the qualifying period, claimant was not required to also meet the requirements of any of the other subsections of Rule 130.102(d), such as enrolling in and satisfactorily participating in a full-time vocational rehabilitation program sponsored by the TRC. Because claimant was found to have returned to work in a position relatively equal to his ability to work, he had no obligation to satisfy the alternative requirements of Rule 130.102(d) relating to participation in a vocational rehabilitation program.

Carrier contends that claimant did not prove that he worked the last week of the filing period. The last week of the filing period was from March 22, 2001, through March 28, 2001. When claimant listed his earnings on his Application for [SIBs] (TWCC-52) for each of the 13 weeks, the weeks he listed did not line up exactly with the actual weeks of the qualifying period. However, from the earnings listed and claimant's testimony, there was evidence that claimant was working during the last week of the qualifying period. We perceive no error in this regard. The hearing officer could find from the evidence that claimant was working the last week of the qualifying period.

Finally, we address carrier's contention that claimant failed to provide sufficient documentation establishing that he satisfied the good faith requirement for SIBs eligibility. In support of its position, carrier cites Texas Workers' Compensation Commission Appeal No. 001177, decided July 12, 2000, and Appeal No. 000281, decided March 24, 2000. However, both of these cases involve documentation of job search efforts, as required by Rule 130.102(d)(5), where a claimant has not returned to work. Consequently, they are

not relevant. With respect to required documentation in cases where a claimant has returned to work, Rule 130.101(1) provides, in pertinent part:

> (1) [TWCC-52] - The Commission [Texas Workers' Compensation] form TWCC-52 containing the following information:
>
> (A) a statement, with supporting payroll documentation, that the employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury [and]
>
> (B) the amount of the employee's wages during the qualifying period[.]

In the present case, claimant testified that he received cash payments for his work cleaning houses and that he listed the wages that he earned on the TWCC-52. Claimant testified that he worked cleaning houses and was paid in cash. In a May 5, 2001, letter, Mr. E, claimant's brother and employer, stated that claimant works with him an average of 10 hours per week and that he pays claimant $230.00 for 40 hours work per month. The hearing officer could find from the evidence that claimant did not provide formal payroll documentation because it did not exist. The hearing officer apparently found claimant to be credible in his testimony concerning the hours that he worked and the wages that he earned during the qualifying period and determined that he had made a good faith effort to obtain employment commensurate with his ability to work. We conclude that the hearing officer's determination in this regard is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra.*

We affirm the hearing officer's decision and order.

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

C. T. CORPORATION SYSTEMS
350 N. ST. PAUL
DALLAS, TEXAS 75201.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge