

APPEAL NO. 011806
FILED SEPTEMBER 11, 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 (CCH) was held on July 13, 2001. The hearing officer resolved the disputed issues by determining that the appellant's (claimant) _____, compensable injury includes de Quervain's disease of the left hand, and that the claimant is not entitled to supplemental income benefits (SIBs) for the eighth and ninth quarters. The claimant appealed the hearing officer's determination of non-entitlement to SIBs for the eighth and ninth quarters, and the respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

We note at the outset that we will not consider for the first time on appeal documentary evidence attached to the appeal, which was available at the time of the CCH but not introduced into evidence for consideration by the hearing officer. Section 410.203(a)(1); Texas Workers' Compensation Commission Appeal No. 93924, decided November 17, 1993.

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(b) provides that an injured employee who has an impairment rating of 15% or greater, and who has not commuted any impairment income benefits, is entitled to SIBs if, during the qualifying period, the employee (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury and (2) has 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 a 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.

It is undisputed that during the qualifying periods for the eighth and ninth quarters, the claimant did not seek employment. Based upon the evidence presented, the hearing officer determined that the claimant was able to work during the qualifying periods for the eighth and ninth quarters, but did not make a good faith effort to obtain employment

commensurate with her 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 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.

The hearing officer's decision and order are affirmed.

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

**DOROTHY C. LEADERER
1999 BRYAN STREET
DALLAS, TEXAS 75201.**

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge