

APPEAL NO. 011830  
FILED SEPTEMBER 17, 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 13, 2001. The hearing officer resolved the disputed issues by determining that the respondent (claimant) made a good faith effort to seek employment during the qualifying period for the 7th quarter of supplemental income benefits (SIBs), that the claimant's unemployment during the qualifying period for the 7th quarter of SIBs was a direct result of his impairment from the compensable injury, and that the claimant is entitled to SIBs for the 7th quarter. The appellant (carrier) appealed on sufficiency grounds, and the claimant responded, urging affirmance.

DECISION

Affirmed.

We would first note that the hearing officer's reference to the issues having been resolved by agreement is plainly erroneous. It is obviously a drafting error and should be disregarded.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBs when the impairment income benefits (IIBs) period expires if the employee has: (1) an impairment rating of at least 15%; (2) not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; (3) not elected to commute a portion of the IIBs; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work. Whether good faith exists is a fact question for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994. It is equally true that whether an employee's unemployment during a SIBs filing period was a direct result of his impairment from the compensable injury is a question of fact for the hearing officer to resolve. The claimant documented a search for employment during every week of the qualifying period, as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)).

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.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Judge

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Robert W. Potts  
Appeals Judge