

APPEAL NO. 011855
FILED SEPTEMBER 19, 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 9, 2001. The appellant (claimant) appeals the hearing officer's decision that he is not entitled to supplemental income benefits (SIBs) for the third quarter. The respondent (carrier) responded, requesting affirmance. There is no appeal of the hearing officer's decision in favor of the claimant on the issue of whether the claimant's compensable injury includes depression.

DECISION

The hearing officer's decision is affirmed.

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). The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the third quarter. The claimant testified that his current treating doctor had him on an off-work status during the qualifying period. It is undisputed that the claimant did not work or look for work during the qualifying period, and that he was not enrolled in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission or a private provider.

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 efforts.

The claimant's current treating doctor reported that the claimant is unemployable because of back pain from his injury and depression. Two other doctors who have examined the claimant reported that the claimant can perform light-duty work. The hearing officer found that during the qualifying period the claimant was capable of performing some work and was not unable to perform any work in any capacity, and that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work. The hearing officer determined that the claimant is not entitled to SIBs for the third quarter. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. The hearing officer's decision that the claimant is not entitled to SIBs for the third quarter is

supported by sufficient evidence and 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 **THE 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.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge