

APPEAL NO. 011863
FILED SEPTEMBER 10, 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 10, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fifth quarter, and that the claimant's weekly earnings to be used to determine the monthly SIBs payment were \$18.46 per week for the qualifying period. The claimant has appealed the adverse determination of SIBs entitlement, arguing that he had made a good faith job search during the qualifying period. The respondent (carrier) replies to the appeal, and urges that the hearing officer's decision be affirmed.

DECISION

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 was whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the fifth quarter. The parties stipulated that the qualifying period for the fifth quarter was from January 10, 2001, through April 10, 2001. 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.

While the claimant listed 53 job contacts during the qualifying period for the fifth quarter and also testified to having received job leads from the carrier's vocational consultant, the hearing officer found from all of the evidence presented "that the claimant's efforts were geared to qualifying for SIBs, not toward obtaining employment." Rule 130.102(e) sets forth a number of factors for the hearing officer to consider in determining whether the claimant made a good faith effort to obtain employment commensurate with his ability to work, including, but not limited to, the number of jobs applied for and the amount of time spent in attempting to find employment. The issue in dispute presented a question of fact for the hearing officer to resolve based on the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer was not persuaded that the claimant's efforts amounted to a good faith effort to obtain employment commensurate with the claimant's ability to work. The hearing officer's decision 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. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge