

APPEAL NO. 011872
FILED SEPTEMBER 18, 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 30, 2001. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth quarter. The claimant appealed this adverse determination. The respondent (carrier) replied, arguing that the claimant's submission is insufficient as an appeal under Section 410.202(c) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a) (Rule 143.3(a)), or, in the alternative, that the hearing officer's determinations were correct and should be affirmed.

DECISION

Affirmed.

The claimant's request for review does meet the minimum requirements for an appeal. See, e.g., Texas Workers' Compensation Commission Appeal No. 92081, decided April 14, 1992. This claimant specified which of the findings and conclusions he wanted to have reviewed, and we are not left to speculate as to what aspects of the decision are being appealed. We reject the carrier's argument that the claimant's request for review is insufficient to meet the minimum requirements for an appeal.

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 fourth quarter. The parties stipulated that the qualifying period for the fourth quarter was from December 19, 2000, through March 19, 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. To the extent that there was any issue about whether the claimant had an ability to work, the hearing officer determined that there was no specific explanation from the claimant's doctor of how the claimant's compensable injury resulted in a total inability to work, and there was another record which showed that the claimant had the ability to work at the sedentary level. There was sufficient evidence in the record from which the hearing officer could make these factual determinations.

As to whether the claimant made a good faith effort to seek employment commensurate with his ability to work, while the claimant listed more than 65 job contacts during the qualifying period for the fourth quarter, the hearing officer found from the evidence presented that "the positions encompassed in the claimant's job contacts . . . were not commensurate with the claimant's ability to work." 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 types of jobs sought by the claimant. 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 **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge