

APPEAL NO. 011932  
FILED OCTOBER 2, 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 17, 2001. With respect to the issues before her, the hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first and second quarters. In its appeal, the appellant (self-insured) essentially argues that the hearing officer's determination is against the great weight of the evidence. The appeal file does not contain a response to the self-insured's appeal from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_, in the course and scope of his employment as a police officer with the self-insured. The claimant testified that he graduated from the police academy and became a police officer in 1981, and that he continued in that position until he was required to take a medical retirement following his compensable injury. The parties stipulated that the claimant had an impairment rating of 26%; that he did not commute his impairment income benefits; that the first quarter of SIBs ran from October 6, 2000, to January 4, 2001; that the second quarter of SIBs ran from January 5 to April 5, 2001; and that the claimant's earnings in the relevant qualifying periods were less than 80% of his preinjury average weekly wage. The qualifying periods were identified as the periods from June 24 to September 22, 2000, and September 23 to December 22, 2000, respectively. The claimant testified that during both of the qualifying periods he worked full time as an investigator with the self-insured's Aviation Department, and he introduced pay stubs in evidence showing his earnings.

The hearing officer did not err in determining that the claimant was entitled to SIBs for the first and second quarters. In Finding of Fact No. 4, the hearing officer states that "[b]etween June 24, 2000 and December 22, 2000, the Claimant worked in the [self-insured's] Aviation department as an investigator, **which fit within his work ability.**" (Emphasis added.) Although the hearing officer did not use the language of the rule, it is apparent that she determined that the claimant had satisfied the good faith requirement under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) by returning to work in the relevant qualifying periods in a job relatively equal to his ability to work. The question of whether a job is relatively equal is a question of fact for the hearing officer and the focus of the inquiry is on the hours worked and the ability to work, not on the wages paid. Texas Workers' Compensation Commission Appeal No. 000616, decided April 26, 2000; Texas Workers' Compensation Commission Appeal No. 000608, decided May 10, 2000. The hearing officer's determination that the claimant satisfied the good faith requirement under Rule 130.102(d)(1) is supported by sufficient evidence and is not so against the great weight of the evidence as to be clearly wrong or manifestly

unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Having affirmed the determination that the claimant met the definition of good faith under Rule 130.102(d)(1), the claimant was not required to additionally satisfy the requirement of Rule 130.102(e) to document a job search effort in each week of the qualifying period. Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000. Nevertheless, the hearing officer was free to consider the evidence of the claimant's job search efforts, in addition to his working a full-time job, as additional indicia of his good faith and we believe that the hearing officer's reference to those efforts was included to provide additional support for her determination that the claimant satisfied the good faith requirement in this instance.

The hearing officer's decision and order are affirmed.

The true corporate name of the self-insured is \_\_\_\_\_ and the name and address of its registered agent for service of process is:

\_\_\_\_\_  
Elaine M. Chaney  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Judy L. S. Barnes  
Appeals Judge

\_\_\_\_\_  
Thomas A. Knapp  
Appeals Judge