

APPEAL NO. 011943
FILED OCTOBER 4, 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 25, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the third, fourth, fifth, sixth, and seventh quarters. The claimant appeals the determinations on sufficiency grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was not entitled to third through seventh quarter SIBs. Sections 408.142 and 408.143 provide, in part, that an employee continues to be entitled to SIBs after the first compensable quarter if the employee (1) has not returned to work or has earned less than 80 percent of his average weekly wage as a direct result of the impairment, and (2) has in good faith sought employment commensurate with his ability to work.

The claimant asserts that he had no ability to work during most of the qualifying period for the third quarter, part of the fifth quarter, and all of the sixth and seventh quarters. The claimant, therefore, did not make a job search during these periods. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides that an injured employee has made a good faith effort to obtain employment commensurate with her 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. Whether the claimant had an ability to work during the qualifying period was a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 951204, decided September 6, 1995. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the medical evidence, the hearing officer could determine that the claimant had some ability to work during the entire qualifying period for the third through seventh quarters.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)) provides that an injured employee 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. A careful review of the record reveals no documented job search by the claimant for several weeks in each of the qualifying periods for quarters at issue. The hearing officer's determination that the claimant is not entitled to SIBs for the third through seventh

quarters is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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

**ROEN & AUTRY
710 FIRST STATE BANK TOWER
400 W. 15TH STREET
AUSTIN, TEXAS 78701-1647.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L.S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge