

APPEAL NO. 011959
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 18, 2001. She determined that (1) respondent/cross-appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third, fifth, and sixth quarters; (2) claimant is entitled to SIBs for the fourth compensable quarter; and (3) claimant has not permanently lost entitlement to SIBs. Appellant/cross-respondent (carrier) appeals, contending that the hearing officer's determination relating to fourth quarter SIBs is not supported by the evidence and, therefore, that claimant has permanently lost entitlement to SIBs because he was not entitled to them for 12 consecutive months. Claimant responded that the Appeals Panel should affirm the hearing officer's determination regarding fourth quarter SIBs. Claimant filed a cross-appeal contending that the hearing officer erred in determining that he is not entitled to SIBs for the third, fifth, and sixth quarters. The file does not contain a response from carrier.

DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant is entitled to SIBs for the fourth quarter. Carrier notes that claimant returned to work for a hotel, performing maintenance work, during six weeks of the qualifying period for that quarter, but then quit his job before the filing period ended at the end of September 2000. Carrier does not argue that the job itself was not relatively equal to claimant's ability to work. Carrier's argument is that claimant was not in good faith because he did not make a weekly job search during the time after he stopped working.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) states 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 returned to work in a position which is relatively equal to the injured employee's ability to work. The hearing officer reviewed the record and concluded that claimant met the requirement of Rule 130.102(d)(1), and that he made a good faith effort to obtain employment commensurate with his ability to work. We have reviewed carrier's above-mentioned contentions and the complained-of determinations regarding good faith and SIBs for the fourth quarter and conclude that the hearing officer's determinations are 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, 176 (Tex. 1986). We also perceive no legal error in the application of the law to the facts. See Texas Workers' Compensation Commission Appeal No. 000616, decided April 26, 2000. Because we have affirmed the determination regarding fourth quarter SIBs, we also affirm the determination that claimant did not permanently lose entitlement to SIBs.

In his cross-appeal, claimant contends the hearing officer erred in determining that claimant is not entitled to SIBs for the third, fifth, and sixth quarters. Claimant contends that although he had not been released to return to work, he still sought work and performed work as a handyman during the qualifying periods in question. He asserts that he did what he could to find work, even though he was also attending a pain management clinic during the qualifying periods in question. Claimant made five job contacts during the third-quarter filing period and five job contacts during the fifth-quarter filing period. There was evidence that claimant worked as a handyman and earned \$1,200.00 during the qualifying period for the third quarter, \$965.00 during the qualifying period for the fifth quarter, and \$1,790.00 during the qualifying period for the sixth quarter. It is clear that the hearing officer determined that, during the qualifying periods for the third, fifth, and sixth quarters, claimant had some ability to work. The hearing officer stated in the decision and order that, during the qualifying periods for these quarters, claimant did not produce supporting documentation such as “business plans, contacts, sales tax registration, or other documentation to document his efforts to establish or maintain a self employed enterprise pursuant to Rule 130.101(D).”

Rule 130.101(1)(D) defines an Application for [SIBs] (TWCC-52) for self-employed individuals as containing “copies of all supporting documentation such as, business plans, contacts, sales tax registration, and any other pertinent documentation to document all efforts to establish or maintain a self-employed enterprise during the qualifying period.” Claimant does not contend that such documentation is in the record. Instead, he appears to contend that he did as much as he could given his continuing impairment. However, the rules set forth what is required for a claimant to prove that he made a good faith effort to obtain employment commensurate with his ability to work. Because claimant had some ability to work and did not document that he looked for work each week of the qualifying period, he was required to otherwise prove good faith under Rule 130.102(d). The hearing officer reviewed claimant’s assertion that he did so through his self-employment during those filing periods and determined that claimant did not meet the good faith requirement due to his failure to provide adequate documentation. We have reviewed the hearing officer’s determinations regarding the third, fifth, and sixth quarters, and we conclude that the hearing officer’s determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. See Texas Workers’ Compensation Commission Appeal No. 000224, decided March 17, 2000. To the extent that claimant contends on appeal that he had no ability to work during the filing periods for the third, fifth, and sixth quarters, we note that claimant did not contend at the hearing that he had no ability to work at all.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS WORKERS' COMPENSATION INSURANCE FUND** and the name and address of its registered agent for service of process is

**RUSSELL R. OLIVER, PRESIDENT
221 W. 6TH ST.
AUSTIN, TEXAS 78701.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge