

APPEAL NO. 012025
FILED OCTOBER 11, 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 24, 2001. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the seventh, eighth, and ninth quarters. The claimant appealed those determinations on sufficiency of the evidence grounds. The respondent (carrier) replied, urging that the hearing officer's decision and order 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 periods for the seventh, eighth, and ninth quarters. The parties stipulated that the qualifying period for the seventh quarter started July 5, 2000, and ended October 3, 2000; that the qualifying period for the eighth quarter started October 4, 2000, and ended January 2, 2001; and that the qualifying period for the ninth quarter started January 3, 2001, and ended April 3, 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.

The claimant contends that he had a total inability to work. The standard of what constitutes a good faith effort to obtain employment in cases of a total inability to work was specifically defined and addressed after January 31, 1999, in Rule 130.102(d). Rule 130.102(d)(4) provides that the statutory good faith requirement may be met if the employee

- (4) 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[.]

The hearing officer determined that the claimant had some ability to work, even though he was unable to return to his prior employment or any employment requiring moderate or heavy manual labor during the relevant qualifying periods. There is a record from a functional capacity evaluation (FCE), and records from the claimant's treating doctor, which show that the claimant had some ability to work at the sedentary level. We note 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 the FCE is an "other" record which showed that the claimant had the ability to work at the sedentary level. Thus, the claimant did not meet his burden of showing a total inability to work.

As to whether the claimant made a good faith effort to seek employment commensurate with his ability to work, the claimant listed only 10 job contacts during the qualifying period for the seventh quarter. The hearing officer determined that the claimant did not satisfy the requirement that he make, and document, job search efforts every week of the qualifying period. While the claimant documented 37 job contacts during the qualifying period for the eighth quarter, the hearing officer found that the claimant did not make an organized search with the purpose of finding employment commensurate with his work abilities. The claimant documented 52 job contacts during the qualifying period for the ninth quarter, but the hearing officer again determined that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work, concluding that the "Claimant's job search was intended to qualify for [SIBs] and not to find 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, the types of jobs sought by the claimant, any job search plan, and the amount of time spent in attempting to find employment.

The issues in dispute presented questions 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 during the relevant qualifying periods 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 **THE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DOROTHY C. LEADERER
1999 BRYAN STREET
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge