

APPEAL NO. 012110
FILED OCTOBER 10, 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 August 15, 2001. The hearing officer resolved the disputed issue before him by determining that the claimant in good faith sought to obtain employment commensurate with his ability to work during the qualifying period for the seventh quarter and he is, therefore, entitled to supplemental income benefits (SIBs) for the seventh quarter. The appellant (carrier) appealed, asserting that the claimant did not make a good faith job search and he is not entitled to SIBs for the seventh quarter. The respondent (claimant) responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the seventh quarter of SIBs and he is, therefore, entitled to SIBs for the seventh quarter.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) sets out the eligibility criteria for entitlement to SIBs. Among other requirements which are not at issue in this case, Rule 130.102(d)(5) requires an injured employee who has not returned to work to show that he has made a good faith effort to obtain employment commensurate with his ability to work to provide sufficient documentation of his job search efforts as described in Rule 130.102(e). Rule 130.102(e) requires a job search every week of the qualifying period, and contains a list of factors to consider when assessing whether the search was made in good faith. It should be noted that included in the list of factors contained in Rule 130.102(e) is "any other relevant factor."

The parties stipulated that the qualifying period for the seventh quarter of SIBs was from February 9, 2001, through May 10, 2001. The claimant testified that he searched for work every day of every week during the relevant qualifying period. The claimant submitted into evidence a copy of his Application for [SIBs] (TWCC-52) for the seventh quarter, which listed 97 in person job contacts. The claimant further testified that he believed he could do the work he applied for, and was enrolled with the Texas Workforce Commission to help in his job search. The claimant did admit that it turned out that he would not have been able to do all of the jobs listed on his TWCC-52. He stated that he would go to the employers and inquire what the demands of the job were. The carrier presented contrary evidence. In his Statement of the Evidence, the hearing officer noted that the claimant's testimony was credible and persuasive.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole

judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** (formerly Texas Workers' Compensation Insurance Fund) and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701**

Susan M. Kelley
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Thomas A. Knapp
Appeals Judge