

APPEAL NO. 012172
FILED OCTOBER 18, 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 August 20, 2001. The hearing officer determined that the appellant's (claimant) unemployment was not a direct result of the impairment from the compensable injury, that the claimant did not make a good faith effort to secure employment commensurate with his abilities, that the claimant is not entitled to supplemental income benefits for the second quarter, and that the claimant was not enrolled in a full-time vocational rehabilitation program under Texas Rehabilitation Commission (TRC) auspices. The claimant appealed these adverse determinations, contending that his unemployment was a direct result of the impairment from the compensable injury, that he made a good faith job search during the qualifying period, and that he "was in compliance and very active in following through or complying with all current TRC matters." In addition, he alleges bias and lack of neutrality on the part of the hearing officer, complaining that the hearing officer ruled against the claimant on every question of fact and law, giving no weight or credibility to the claimant or his documentary evidence. The respondent (carrier) replies to the appeal, and urges that the hearing officer's decision and order be affirmed.

DECISION

Affirmed.

The hearing officer determined that the claimant's unemployment was not a direct result of his compensable injury. The claimant's treating physician stated in his _____, report that the claimant's "chief complaint was low back pain of unknown etiology." We also note that on March 3, 2001, the claimant was released to return to work with no restrictions by the carrier-selected required medical examination doctor. Our review of the record does not reveal that the hearing officer's direct result determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(e) (Rule 130.102(e)) provides that 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. This rule goes on to list a number of factors which may be considered in determining whether a good faith effort was made, including the number and types of jobs sought, the existence of applications or resumes to document the job search efforts, any job search plan, and the amount of time spent in attempting to find employment. The qualifying period for the second quarter began on February 14, 2001, and ended on May 15, 2001. Our review of the record affirms the hearing officer's discussion of the evidence that during the first 10 weeks of the qualifying period the claimant conducted only a minimal job search; one week

demonstrated three contacts, one week demonstrated one contact and eight weeks demonstrate only two contacts each. The other three weeks had no documented job searches.

Whether the required good faith job search exists is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 950307, decided April 12, 1995. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Nothing in our review of the record indicates that the challenged determination is 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 the determination of the hearing officer on appeal. Pool; Cain.

Further, there is sufficient evidence to support the hearing officer's determination that the claimant was not enrolled in and satisfactorily participating in a full-time vocational rehabilitation program sponsored by the TRC. We held in Texas Workers' Compensation Commission Appeal No. 001536, decided August 9, 2000, that a claimant's enrollment and satisfactory participation in the vocational rehabilitation program satisfied the definition of "good faith" set forth in Rule 130.102(d)(2) and a claimant need not satisfy Rule 130.102(e) if such claimant has satisfied one of the good faith elements in Rule 130.102(d), citing Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000. Claimant's Exhibit No. 8 reflects that the claimant was determined to be eligible for TRC services on February 13, 2001, and was provided information about barber schools in (city). However, the TRC counselor noted in a June 6, 2001, letter: "At this point, I lost contact with the [claimant] and as a result of my inability to locate him; his file was closed on May 22, 2001." Although there was evidence that the claimant contacted several schools about retraining as a barber, traveling to city to contact barber schools about enrollment is not enrollment. The inability of the counselor to even locate the claimant through the bulk of the qualifying period supports the hearing officer's conclusion that the claimant was not enrolled in, and satisfactorily participating in, a full-time vocational rehabilitation program during the qualifying period.

Finally, the claimant argues that the hearing officer exhibited bias against him and in favor of the carrier. Our review of the record does not reveal any bias against the claimant or in favor of the carrier. A hearing officer's weighing of the evidence so as to rule in favor of one party and against another is not, in and of itself, evidence of bias. Texas Workers' Compensation Commission Appeal No. 941105, decided September 29, 1994. We do not perceive error on the part of the hearing officer and we reject the claimant's argument regarding bias.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(SELF-INSURED)**, and the name and address of its registered agent for service of process is

**JERRY CESSNA
202 E. PILAR
NACOGDOCHES, TEXAS 75961.**

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge