

APPEAL NO. 012242  
FILED NOVEMBER 6, 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 24, 2001. With respect to the sole issue before him, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first quarter, February 27, 2001, through May 28, 2001.

The claimant appeals, arguing that he made a good faith effort to find employment during the qualifying period of November 15, 2000, through February 13, 2001, and that the reason he did not have contacts during some weeks of the qualifying period was because those weeks were "holiday" weeks. The claimant also argues that the hearing officer should not have considered the testimony of the vocational rehabilitation counselor, Ms. J, as she was not involved in his case until after both the qualifying period for and the first quarter. There is no response from the respondent (carrier) in the file.

DECISION

Affirmed.

Though it was not stipulated by the parties, or found by the hearing officer, the record implicitly shows that the claimant sustained a compensable injury on \_\_\_\_\_. The hearing officer found that the claimant has an impairment rating (IR) of 26% and the parties stipulated that impairment income benefits (IIBs) have not been commuted. The hearing officer found that the qualifying period for the first quarter began on November 15, 2000, and ended on February 13, 2001. The claimant argued at the CCH that he had made a good faith search for employment commensurate with his ability.

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). Rule 130.102(b) provides that an injured employee who has an IR of 15% or greater, and who has not commuted any IIBs, is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work. The hearing officer's determination that the claimant's unemployment ("decrease in earnings") was a direct result of his impairment has not been appealed and will not be discussed further.

The criterion in dispute is whether the claimant attempted in good faith to obtain employment commensurate with his ability to work during the qualifying period. Section 408.142(a)(4); Rule 130.102(b)(2). In this instance, "good faith" can be proven by compliance with Rules 130.102(d)(5) and 130.102(e). Rule 130.102(e) provides that an injured employee who 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 hearing officer determined that the employment contacts listed and other documentation provided with the claimant's Application for [SIBs] (TWCC-52) did not support a finding of claimant's good faith effort. Specifically, the hearing officer found that the claimant had no employment contacts for the periods from November 21, 2000, to December 4, 2000, and from December 19, 2000, to January 8, 2001. The hearing officer determined that the claimant had not shown an entitlement to SIBs. There is no provision in Rule 130.102(e) to exclude weeks which have holidays from the requirement to seek employment. The hearing officer's determination is supported by the evidence and is not against the great weight and preponderance of the evidence.

The claimant's argument about the testimony of Ms. J is untenable. Ms. J testified regarding her confirmation of the claimant's listed employment contacts for the first quarter qualifying period. The hearing officer apparently and understandably decided that the fact that she was not assigned to the claimant's case until May 2001 was immaterial to the testimony as Ms. J testified only on her verification efforts.

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **GULF GROUP LLOYDS** and the name and address of its registered agent for service of process is

**WILLIAM SZERLIP  
4600 FULLER DRIVE  
IRVING, TEXAS 75038.**

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Judy L. S. Barnes  
Appeals Judge

---

Elaine M. Chaney  
Appeals Judge