

APPEAL NO. 012301
FILED NOVEMBER 7, 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 28, 2001. He determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the second compensable quarter. On appeal, the appellant (carrier) contends that this determination is against the great weight and preponderance of the evidence and requests that all findings of fact, except those that were stipulated to at the CCH and those relating to the claimant's employment status and the employer's insurance carrier on the date of injury, be reviewed on appeal. The claimant urges affirmance.

DECISION

We affirm.

Sections 408.142(a) and 408.143 provide that an employee is entitled to SIBs upon the expiration of the impairment income benefit (IIBs) period if the employee has: (1) an impairment rating (IR) of at least 15%; (2) not returned to work or has earned less than 80% of the employee's average weekly wage (AWW) as a direct result of the impairment; (3) not elected to commute a portion of the IIBs; and (4) made a good faith effort to obtain employment commensurate with his or her ability to work. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b) (Rule 130.102(b)), the quarterly entitlement to SIBs is determined prospectively and depends on whether the employee meets the criteria during the "qualifying period." Under Rule 130.101(4), the qualifying period ends on the 14th day before the beginning date of the SIBs quarter and consists of the 13 previous consecutive weeks. Rule 130.102(d)(4), effective January 31, 1999, provides 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 provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment." 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 parties stipulated that the second SIBs quarter began on April 27 and ended on July 26, 2001; that the qualifying period began on January 13 and ended on April 13, 2001; that the claimant's IR is greater than 15%; that during the qualifying period the claimant earned less than 80% of her AWW; and that the claimant had not commuted any portion of IIBs. The questions for resolution then became whether the claimant's

unemployment during the qualifying period were a direct result of her impairment from the compensable injury and whether the claimant made a good faith effort to obtain employment commensurate with her ability to work. We have previously held that both of these questions present factual determinations for the hearing officer. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994.

Attached to the Application for [SIBs] (TWCC-52) for the second quarter is a listing of 26 job-related contacts made by the claimant during the second quarter qualifying period. A review of the documentation, if deemed credible, reflects a job search effort made in every week of the qualifying period. The claimant testified that because of the compensable injury, she could no longer perform her previous job and that her limited education and vocational skills were a hindrance to finding other types of employment. The hearing officer found that claimant's unemployment during the qualifying period were a direct result of her impairment from the compensable injury; that she looked for work commensurate with her ability to work every week of the qualifying period; that she documented her job search efforts; and that she made a good faith effort to obtain employment commensurate with her ability to work in the qualifying period corresponding to the second compensable quarter. Based on these findings, the hearing officer concluded that the claimant is entitled to SIBs. We will reverse a factual determination of a hearing officer only if that determination is 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); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficiently supports the disputed findings of fact and the determination that the claimant is entitled to SIBs for the second quarter.

The decision and order of the hearing officer are affirmed.

The true corporate name of the self-insured is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
823 N. ST. PAUL
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge