

APPEAL NO. 012323
FILED NOVEMBER 13, 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 30, 2001. With respect to the issues before her, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fourth quarter, or for the fifth quarter.

The claimant appeals, arguing that she made a good faith effort to find employment during the qualifying periods for the fourth and fifth compensable quarters¹, and that the reason she did not have contacts during some weeks of the qualifying periods was because she was otherwise occupied with physical therapy sessions. The claimant also argues that the hearing officer was unfair to her and should not have asked her son to leave the CCH room. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable back injury on _____; that the claimant has an impairment rating (IR) of 15% or greater; that she had not commuted her impairment income benefits (IIBs); and that the fourth SIBs quarter began on August 21, 2000, and ended on November 19, 2000, and that the fifth SIBs quarter began on November 20, 2000, and ended on February 18, 2001. The claimant argued at the CCH that she had made a good faith search for employment commensurate with her 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 was a direct result of her 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 her ability to work during the qualifying periods. 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

¹The hearing officer found that the qualifying periods for the fourth and fifth quarters were May 9, 2000, through August 7, 2000, and August 8, 2000, through November 6, 2000, respectively.

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 the claimant's good faith effort. Specifically, the hearing officer found that the claimant had no employment contacts for several weeks during the qualifying periods for both the fourth and fifth compensable quarters. 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 during which the claimant has "less than full time" physical therapy sessions from the requirement to seek employment. The hearing officer's determinations are supported by the evidence and are not against the great weight and preponderance of the evidence.

The claimant's argument that the hearing officer was unfair to her, biased toward the carrier, and unfairly asked her son to leave the CCH room is not supported by the record. We note here that the CCH was at least the third held for these SIBs quarters, not the least reason being the complaints from the claimant, particularly dealing with her unhappiness with the translator. The hearing officer did ask the claimant's son to leave the room, but only after warning him, as an observer, not to speak on the record or answer questions directed toward his mother. We do not find that the hearing officer abused her discretion in this regard.

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

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge