

APPEAL NO. 012343
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 was held on September 17, 2001. The following disputed issues were before the hearing officer: (1) Is the appellant/cross-respondent (claimant) entitled to supplemental income benefits (SIBs) for the fifth quarter and/or the eighth quarter; (2) Is the claimant entitled to SIBs for the sixth quarter and the seventh quarter; and (3) Is the respondent/cross-appellant (carrier) relieved of liability for SIBs because of the claimant's failure to timely file Application[s] for [SIBs] (TWCC-52) for the sixth and seventh quarters, and, if so, for what period. The parties stipulated that the claimant is not entitled to SIBs for the sixth and seventh quarters, and that the carrier is relieved of liability for those quarters. As to the remaining disputed issues before him, the hearing officer determined that the claimant made a good faith effort to obtain employment during the qualifying period for the fifth quarter and is entitled to SIBs for that quarter, and that the claimant did not make a good faith effort to obtain employment during the qualifying period for the eighth quarter and is not entitled to SIBs for that quarter. The claimant appealed the hearing officer's determination as to her nonentitlement to SIBs for the eighth quarter, and the carrier appealed the hearing officer's determination as to the claimant's entitlement to SIBs for the fifth quarter. The carrier's appeal also contained a response to the claimant's appeal. The file does not contain a response from the claimant.

DECISION

Affirmed.

It is undisputed that the qualifying period for the fifth quarter of SIBs was from April 27, 2000, through July 26, 2000, and that the qualifying period for the eighth quarter of SIBs was from January 25, 2001, through April 25, 2001. The claimant testified that she had some ability to work during these qualifying periods, and this testimony is supported by the medical evidence. At issue in this appeal is whether the claimant made a good faith job search during the qualifying periods for the fifth and eighth quarters.

Section 408.142(a)(4) provides that in addition to the other eligibility requirements, which are not at issue in this case, an employee is entitled to SIBs if the employee has attempted in good faith to obtain employment commensurate with the employee's ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(5) (Rule 130.102(d)(5)) 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 Rule 130.102(e) to show that he or she has made a good faith effort to obtain employment. Rule 130.102(e) provides that, except as provided in subsection (d)(1), (2), (3), and (4), 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.

The hearing officer did not err in determining that the claimant made a good faith effort to obtain employment during the qualifying period for the fifth quarter and that she is, therefore, entitled to SIBs for the fifth quarter.

The claimant's Application for [SIBs] (TWCC-52) for the fifth quarter of SIBs documents at least one job search every week of the qualifying period. On appeal, the carrier asserts that the claimant looked for some jobs which were beyond her restrictions and also for some positions beyond her qualifications. The claimant testified that she believed she would be able to perform every job she applied for, although she recognized that some would require the employer to provide her with some training. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Whether the claimant made good faith searches commensurate with her ability to work were questions of fact for the hearing officer to determine from the evidence presented. Nothing in our review of the record indicates that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. 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 did not err in determining that the claimant did not make a good faith effort to obtain employment during the qualifying period for the eighth quarter and that she is, therefore, not entitled to SIBs for the eighth quarter.

The claimant's TWCC-52 for the eighth quarter documents no job searches for the period of January 25, 2001, through March 4, 2001, inclusive. There are no medical narratives in the record which specifically explain how the claimant's compensable injury caused a total inability to work for this time period as is required by Rule 130.102(d)(4). The claimant's testimony conceded that she did not look for work each week of this qualifying period. She indicated that she was confused about these time periods. Because the claimant did not document a job search every week of the qualifying period for the eighth quarter, she is not entitled to SIBs for the eighth quarter pursuant to Rule 130.102(d)(5) and (e).

The hearing officer's decision and order are affirmed.

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

**WAYNE GILL
CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge