

APPEAL NO. 012352
FILED NOVEMBER 5, 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 September 17, 2001. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first, second, and third quarters. The claimant appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision is affirmed.

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). The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods for the first, second, and third quarters. The claimant testified that he had no ability to work during the relevant qualifying periods, but that he looked for work because he was pressured to do so by the carrier.

Rule 130.102(d)(4) 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 been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, 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 claimant's treating doctor reported that the claimant is unable to return to work because of his compensable injury and that the claimant needs rehabilitation and work hardening before he can return to work. The doctor who examined the claimant at the carrier's request reported that the claimant should be able to perform light-duty work. The claimant did not document a job search for each week of the qualifying periods for the first and second quarters. The claimant did document a job search for each week of the qualifying period for the third quarter, but based on other evidence in the record, the hearing officer was not persuaded that the claimant actually made all of the job contacts listed or that he had actually searched for work each week of the qualifying period.

The hearing officer found that during the relevant qualifying periods the claimant was capable of performing some type of work, that he did not look for employment commensurate with his ability to work every week, and that he did not attempt in good faith

to obtain employment commensurate with his ability to work. The hearing officer concluded that the claimant is not entitled to SIBs for the first, second, and third quarters. Conflicting evidence was presented at the CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision is supported by sufficient evidence and is not 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 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ST. PAUL GUARDIAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge