

APPEAL NO. 012396  
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 was held on September 18, 2001. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter, April 4, 2001, through July 3, 2001, or the second quarter, July 4, 2001, through October 2, 2001. The claimant appeals, arguing that (1) the hearing officer's Findings of Fact Nos. 3 and 4 are insufficient as a matter of law because they do not provide the claimant "required due process notice of the basis of the hearing officer's decision," and 2) that the hearing officer's decision that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work is against the great weight and preponderance of the evidence. The respondent (carrier) replied, and urges affirmance.

DECISION

Affirmed.

As to the claimant's due process argument, we conclude that the hearing officer's findings of fact and conclusions of law are sufficient to meet the requirements of Section 410.168(a)(1). The hearing officer made a decision on the relevant issue, entitlement to SIBs, after a hearing in which the claimant took the position that he was unable to perform any type of work in any capacity. The hearing officer found that the claimant had some ability to work. It is difficult to fathom a more clear rejection of the claimant's position. This argument is without merit.

The hearing officer did not err in finding that the claimant was not entitled to SIBs. The claimant contended that he had the complete inability to work at any job. The 1989 Act has, since its effective date, required a job search commensurate with the ability to work in order to qualify for SIBs. It is the exception to this requirement that must be proven. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)) lists the actions that constitute a good faith requirement to search for employment; inability to work in any capacity must be proven through a narrative report from a doctor which specifically explains how the injury causes a total inability to work and there must be no other records that show that the injured employee is able to return to work. Rule 130.102(d)(4). The claimant in this case testified that he made no search, and medical evidence was conflicting on ability to work. The hearing officer evidently believed that the treating doctor's medical reports regarding inability to work were not sufficient, and specifically found that the medical documentation from the carrier's required medical examination doctor qualified as an other record which showed an ability to work.

The hearing officer has properly applied the rule to the facts. An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support

a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We cannot agree that this is the case here.

We affirm the hearing officer's decision and order.

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

**C T CORPORATION  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge