

APPEAL NO. 012458
FILED DECEMBER 3, 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 12, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fourth quarter.

The claimant appealed, referring to a medical report which had been excluded at the CCH and to information the claimant alleged he received from the local Texas Workers' Compensation Commission's (Commission) field office. The file does not contain a response from the respondent (carrier).

DECISION

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). Rule 130.102(b) provides that an injured employee who has an impairment rating (IR) of 15% or greater and who has not commuted any impairment income benefits (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 finding that the claimant's unemployment during the applicable quarter was a direct result of the impairment from the compensable injury has not been appealed and will not be discussed further.

The parties stipulated that the claimant sustained a compensable (low back) injury on _____, with a 15% IR and that IIBs were not commuted. The parties agreed that the qualifying period was from March 2, 2001 (all dates hereafter are 2001 unless otherwise noted), through June 2. At issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work.

The facts are somewhat vague but apparently the claimant had been released to light duty sometime prior to the qualifying period at issue (the claimant explains that this was in order to get his "electric scooter" that he uses to get around) and at the beginning of the qualifying period was documenting job contacts each week. The claimant's Request for Benefit Review Conference (TWCC-45) documents some 17 job contacts between March 15 and May 16. In evidence are two reports, both dated May 10, from the claimant's treating doctor. One states that the claimant "is doing about the same with no significant changes," the other deals with payment for an emergency room visit. Around May 16 to May 22, the claimant learned that he had been approved for Social Security Disability

benefits. The claimant testified that he spoke with someone at the Commission field office who told him that he would not have to look for work if his doctor said he could not work. (Dispute Resolution Information System notes indicate this conversation did not occur until June 12.) The claimant said that he then spoke with his treating doctor (but apparently had no additional examination) and, in a report dated May 22, the doctor stated:

I do not think [claimant] is able to return to work in any gainful manner. I think he is disabled with regard to this from both a psychosocial and medical reasons [sic].

The claimant relies on a theory of total inability to work after May 16 through the end of the qualifying period, June 2.

The hearing officer referenced Rule 130.102(d) and determined that "Claimant had some ability to work during the entire qualifying period for the 4th quarter, and failed to look for work every week of the qualifying period," applying Rules 130.102(d)(4) and 130.102(e). The hearing officer's determinations are supported by the evidence.

The claimant requests that we review the treating doctor's report dated August 28; however, that report was specifically excluded on objection by the carrier for failure to timely exchange the report. The hearing officer did not abuse her discretion in excluding the report and we will not consider it on appeal.

The claimant also contends that he "was not aware of the law" that his actions would disqualify him from benefits. We have long held that ignorance of the workers' compensation law is not good cause for failure to comply with the law. Texas Workers' Compensation Commission Appeal No. 93551, decided August 19, 1993.

The hearing officer's decision is supported by the evidence, and the decision will not be disturbed unless the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We cannot agree that this was the case, and the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**THE CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge