

APPEAL NO. 012520
FILED NOVEMBER 8, 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 27, 2001, with the record closing on September 5, 2001. The hearing officer determined the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the sixth quarter.

The claimant appeals, contending that he had complied with the SIBs rules and that the hearing officer's decision is contrary to the great weight of the evidence. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was a delivery person and sustained injuries to his left shoulder, left knee, and ankle in a compensable motor vehicle accident on _____. The claimant currently has a left torn rotator cuff, which causes lifting restrictions.

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 to the compensable injury, that the claimant has a 23% IR, that IIBs were not commuted, and that the qualifying period for the sixth quarter was from February 23, 2001, through May 24, 2001. At issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work.

The good faith effort criteria may be met by compliance with Rule 130.102(e) which provides that a claimant with an ability to work "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." Rule 130.102(e) goes on list some 11 factors which shall be used in evaluating the good faith effort. The claimant made 34 job contacts during the qualifying period. Some of the contacts were on referral from the carrier's vocational rehabilitation specialist. There was considerable testimony and argument about verification and counter

verification efforts of the job contacts and whether, in fact, the referrals were useful or whether the claimant had actually applied to the business locations to which he had been referred. The claimant testified that he has been unable to get assistance from the Texas Rehabilitation Commission because his doctor has not released him and there was some testimony that the claimant had turned down a job at a halfway house because the halfway house was having funding problems.

In any event, there were multiple factors that the hearing officer could consider and whether the claimant's actions amounted to a good faith effort to obtain employment commensurate with his ability was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

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

**C. T. CORP SYSTEMS
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge