

APPEAL NO. 012645  
FILED DECEMBER 10, 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 28, 2001. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the second quarter. The appellant (carrier) has appealed this determination contending that the claimant did not look for work each week of the qualifying period. The claimant responded, alleging that the carrier did not perfect its appeal by timely filing the appeal; there is no response to the merits of the appeal.

DECISION

Reversed and rendered.

First, with respect to the claimant's response we have reviewed the file and are satisfied that the carrier timely filed the appeal pursuant to Section 410.202(d), which became effective June 17, 2001.<sup>1</sup>

As the hearing officer noted, the claimant looked for work but did not document a search for work in every week of the qualifying period that ran from April 5 through July 4, 2001. She missed a week when she had physical therapy for four days of the week. The claimant was found able to perform sedentary, light, and medium full-time work by a doctor for the carrier in May 2001; her treating doctor had earlier released her to full duty effective April 25, 2001.

The claimant testified that she had registered for several temporary agencies, and had worked two one-day assignments, on June 21 and June 28, 2001, for one such agency, at two different jobs. The claimant said she returned working 40 hours a week on September 9, 2001, again through a temporary services agency. The claimant's argument at the CCH was not that she had, during the period, returned to work in a job relatively equal to her ability to work, but that the only week she did not look for work was one in which she attended physical therapy which should absolve her of a search for employment during that week. When the claimant was asked when she had "returned" to work, she answered September 9, 2001.

In reviewing the evidence in this case, we agree that the hearing officer erred by holding that the claimant met the requirements of a good faith search for employment as set out in Rule 130.102(d)(1). As that rule states, one way a claimant may establish entitlement to SIBs is by proving that he or she "has returned to work in a position which is relatively equal to the injured employee's ability to work." Rule 130.102(d)(1).

---

<sup>1</sup>Section 410.202 states that Saturdays, Sundays and holidays listed in Section 662.003, Government Code, are not included in computation of the time in which a request for appeal under subsection (a) or a response under subsection (b) must be filed.

While it is not entirely clear from her discussion whether the hearing officer held that the good faith requirement was met by the claimant's eventual return to work on September 9, 2001, or by the single-day assignments on June 21 and June 28, 2001, her finding of fact was that the claimant returned to such work "during" the filing period. While the one-day assignments may have been ones that she could perform, Rule 130.102(d)(1) also requires a "return" to work within the quarter under review. The preamble to the adopted rule describes Rule 130.102(d)(1) in these terms:

A person who has actually been successful in returning to work within his or her ability will not be required to continue additional job search efforts. This standard would not apply to situations where the position was clearly limited to a very short period of time. It is intended to apply to more regular employment that represents a true return to the workforce. (24 TEX. REG. 401, January 22, 1999)

We cannot therefore agree that acceptance of a limited, one-day-only work assignment such as in this case constitutes a "return" to work as intended by Rule 130.102(d)(1). See Texas Workers' Compensation Commission Appeal No. 000326, decided March 29, 2000. (This is not to say, however, that the rule does not apply when an injured worker, as a return to regular employment, goes to work for a temporary services agency and is sent out in sequence to various work sites).

Therefore, the finding of the hearing officer that during the qualifying period the claimant "returned" to work in a position which is relatively equal to the claimant's ability to work is against the great weight and preponderance of the evidence. Because of this, the claimant still had to prove that she looked for work every week of the qualifying period or otherwise met the requirements of a good faith search as set out in Rule 130.102(d). We conclude that the hearing officer's good faith determination regarding the second quarter is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and reverse and render a decision that the claimant was not entitled to SIBs.

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

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

Susan M. Kelley  
Appeals Judge

CONCUR:

Philip F. O'Neill  
Appeals Judge

Robert W. Potts  
Appeals Judge