

APPEAL NO. 013118
FILED JANUARY 22, 2002

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 November 12, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 4th quarter. The claimant appeals the determination, asserting factual and legal error. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was not entitled to 4th quarter SIBs. The claimant asserted at the CCH that she had no ability to work during the qualifying period for the 4th quarter and, in the alternative, made a good faith effort to find employment commensurate with her ability to work. Whether the claimant had an ability to work and made a good faith effort to seek employment commensurate with that ability were questions of fact 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)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant asserts that the hearing officer applied the wrong dates in determining that the claimant failed to make a good faith job search each week of the qualifying period for the 4th quarter. Our review of the record reveals that the parties stipulated to a qualifying period from May 5, 2001, through August 3, 2001, and these dates were used by the hearing officer in reaching a determination in this case. The claimant now asserts that the qualifying period extended from May 19, 2001, to August 17, 2001, as a matter of law, and that the claimant's job search should be reviewed in the context of these dates. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.101(4) (Rule 130.101(4)), a qualifying period ends on the 14th day before the beginning date of the SIBs quarter and consists of the 13 previous consecutive weeks. In our assessment, the 4th quarter qualifying period began on May 6, 2001, and ended on August 4, 2001. Applying these dates or any of the periods put forth by the parties, the claimant, nonetheless, failed to document a job search every week of the qualifying period. Accordingly, the hearing officer's application of the stipulated period, in this case, did not constitute reversible error. In addition, we note that the hearing officer's determination in this case is not restricted to whether the claimant documented a job search each week of the qualifying period, but rests in part on findings, supported by the evidence, that the claimant's job search efforts

were negligible with regard to the time spent, and were self-restricted, selective, and lacking in timing, forethought, and diligence.

The decision and order of the hearing officer is affirmed.

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

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

Edward Vilano
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge