

APPEAL NO. 013154
FILED FEBRUARY 6, 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 was held on November 29, 2001. The hearing officer resolved the disputed issues before her by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first, second, and third quarters due to his failure to make a good faith effort to obtain employment commensurate with his ability to work during the respective qualifying periods. The claimant appealed, asserting that he did make a good faith effort to obtain employment commensurate with his ability to work. The respondent (carrier) responded, urging affirmance.

DECISION

We affirm.

The parties stipulated that the claimant reached maximum medical improvement on June 11, 1999, with a 32% impairment rating; that the qualifying period for the first quarter of SIBs began on December 31, 2000, and ended on March 31, 2001; that the qualifying period for the second quarter of SIBs began on April 1, 2001, and ended on June 30, 2001; and that the qualifying period for the third quarter of SIBs began on July 1, 2001, and ended on September 29, 2001.

At issue in this case is whether the claimant made a good faith effort to obtain employment during the relevant qualifying periods. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides that an injured employee has made a good faith effort to obtain employment commensurate with his ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. Rule 130.102(e) provides, in part, that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity 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.

The record reflects that during the qualifying period for the first quarter, the claimant recorded 20 job contacts on his application for SIBs. The claimant did not record the dates of the contacts, did not keep copies of the applications, and testified that he did not specifically recall when the contacts were made. During the qualifying period for the third quarter, the claimant documented 12 job contacts. He failed to document any job search during weeks 12 and 13. Although he was attending a GED preparation class during those two weeks, that class was not sponsored by the Texas Rehabilitation Commission. Rule 130.102(d)(2) and (3). We, therefore, perceive no error in the hearing officer determining

that the claimant failed to meet his burden of proof to show that he made a documented job search during each week of the qualifying period for the first and third quarters pursuant to Rule 130.102(e).

The claimant testified that he had a total inability to work during the qualifying period for the second quarter. Rule 130.102(d)(4) requires an injured employee to submit a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that he is able to return to work. The hearing officer did not err in determining that the claimant was not entitled to SIBs for the second quarter pursuant to Rule 130.102(d)(4) because she found these requirements were not met.

The 1989 Act makes the hearing officer the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer's decision is supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong or unjust.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** 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.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts

Appeals Judge