

APPEAL NO. 020047
FILED FEBRUARY 21, 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 December 11, 2001. The hearing officer determined that (1) the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first, second, and third quarters; and (2) the respondent (carrier) is relieved of liability for SIBs for the second and third quarters because of the claimant's failure to timely file an Application for [SIBs] (TWCC-52) for the second and third quarters. The claimant appealed, arguing that the hearing officer erred in determining that the claimant was not entitled to SIBs for the first, second, and third quarters. The carrier filed a response, urging affirmance.

DECISION

Affirmed.

The qualifying periods for the first through third quarters ran from October 15, 1999, through July 13, 2000. The claimant said that he filed his second quarter SIBs application on or about April 25, 2000, but did not file his third quarter application until sometime in 2001. The hearing officer noted that the claimant was not able to definitely state when such applications were mailed because he asked another person to do it for him. The claimant had been found not to be entitled to the first quarter of SIBs by the Texas Workers' Compensation Commission, and the hearing officer therefore found that there was no duty for the carrier to mail either the second or third quarter applications to the claimant. The claimant sought no employment for any of the quarters in issue.

GOOD FAITH JOB SEARCH

The legislature has required that a claimant who applies for SIBs must make a good faith search for employment commensurate with the ability to work. Sections 408.142(a)(4) and 408.143 (a)(3). The claimant, however, contended that he was completely unable to work.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), as applied to this case, defines good faith as follows:

Good Faith Effort. An injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:

- (4) 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[.]

The hearing officer determined that an August 1999 functional capacity evaluation and a January 2000 treating doctor's report both showed that the claimant had an ability to work light duty and therefore were "other records" showing an ability to work. The hearing officer did not err in finding that the claimant was required to seek employment and therefore his failure to search did not meet the "good faith" requirement for any of the quarters in issue.

TIMELINESS OF SIBs APPLICATIONS

The hearing officer did not err in finding that the carrier would not be liable for SIBs for the second and third quarters of SIBs. See Section 408.143(c). She found (and the record supports) that neither application was mailed until April 2001, well after the filing and qualifying periods for each quarter. The duty of a carrier to send the application arises only with either the first payment of SIBs or a determination of nonentitlement for any quarter. Rule 130.104(b). Neither situation applied in this case during the applicable periods in issue.

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Co. v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not agree that this was the case here, and affirm the decision and order.

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

**ROBERT PARNELL
8144 WALNUT HILL LANE
SUITE 1600
DALLAS, TEXAS 75231.**

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge