

APPEAL NO. 020176
FILED MARCH 13, 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 January 9, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first and second quarters. The claimant appealed the hearing officer's determination that he is not entitled to SIBs for the first quarter. No response was received from the carrier. There is no appeal of the hearing officer's determination that the claimant is not entitled to SIBs for the second quarter.

DECISION

The hearing officer's decision is affirmed.

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). The SIBs criterion in issue is whether the claimant attempted in good faith to obtain employment commensurate with his ability to work during the qualifying period for the first quarter. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's 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 parties stipulated that the claimant sustained a compensable injury; that he has a 29% impairment rating; that he did not commute impairment income benefits; that the first quarter of SIBs was from August 15, 2001, through November 13, 2001; and that the qualifying period for the first quarter was from May 3, 2001, through August 1, 2001. The claimant's treating doctor and referral doctor have reported that the claimant is unable to work because of cervical and lumbar problems that resulted from his compensable injury. The claimant was examined by a doctor at the carrier's request on May 18, 2001, and that doctor reported that the claimant can perform light-duty work. The claimant said that he did not receive the carrier's doctor's report until June 8, 2001, and that he began looking for work thereafter. A videotape of the claimant taken on June 20 and 21, 2001, shows the claimant walking with the use of a cane, driving, standing, and bending. The claimant's Application for SIBs (TWCC-52) for the first quarter does not document any job search for

the first six weeks of the qualifying period, but does document a job search each week of the last seven weeks of the qualifying period, with the first job contact listed as June 15, 2001. The claimant contends that he had no ability to work before he received the carrier's doctor's report and that he searched for jobs within his restrictions after he received that report.

In Texas Workers' Compensation Commission Appeal No. 002428, decided December 1, 2000, the Appeals Panel noted that a claimant could satisfy the good faith requirement by demonstrating that he or she had no ability to work for part of the qualifying period and by conducting a good faith job search in the other part of the qualifying period, but that in order to prevail, the claimant must produce evidence that establishes the requirements of Rule 130.102(d)(4) for the period of time that no ability to work was asserted and evidence that meets the criteria of Rule 130.102(e) for the period of time wherein a good faith job search was claimed. In Texas Workers' Compensation Commission Appeal 002073, decided October 3, 2000, the Appeals Panel noted that a release to return to work is not required to trigger an injured employee's duty to seek employment in good faith. It is evident from the hearing officer's decision in the instant case that the hearing officer was not persuaded that the claimant met his burden of proof.

The claimant cites Texas Workers' Compensation Commission Appeal No. 010617-s, decided May 15, 2001, and Texas Workers' Compensation Commission Appeal No. 010815-s, decided June 6, 2001, stating that in those decisions the Appeals Panel found that a claimant was entitled to rely on the dates shown in the TWCC-52 furnished by the Texas Workers' Compensation Commission (Commission) and that unless the claimant had some ability to work during a week, he did not have to make a job search. In Appeal No. 010617-s, the carrier put incorrect dates for the qualifying period for the second quarter on the TWCC-52 and in Appeal No. 010815-s, the Commission put incorrect dates for the qualifying period for the first quarter on the TWCC-52. In both of those decisions the Appeals Panel held that the dates of the qualifying period on the TWCC-52 were to be used for the reasons stated in those decisions. In the instant case, the carrier put the correct dates of the qualifying period for the first quarter on the TWCC-52 and those dates are also the dates stipulated to by the parties. Consequently, there is no matter involving incorrect dates of a qualifying period to be addressed. Appeal No. 010617-s, *supra*, did affirm a hearing officer's finding that the claimant in that case had no ability to work during the last 10 days of the qualifying period, but that decision was based upon the particular medical reports in evidence, which reflected that the claimant's condition had deteriorated. The hearing officer in the instant case had to evaluate the claimant's contention that he had no ability to work based on the evidence before her.

The hearing officer found that the claimant had some ability to work during the qualifying period for the first quarter and that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work during that qualifying period. The hearing officer concluded that the claimant is not entitled to SIBs for the first quarter.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

**CT CORPORATION SYSTEM
350 N. ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge