

APPEAL NO. 020245
FILED MARCH 18, 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 17, 2002. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter. The appellant (carrier) appealed, urging that the hearing officer erred in determining entitlement to SIBs for the fourth quarter. There is no response from the claimant contained in our file.

DECISION

Affirmed.

The parties stipulated that the claimant reached maximum medical improvement on July 14, 1998, with a 40% impairment rating; that the claimant did not commute any portion of the impairment income benefits (IIBs); that the qualifying period for the fourth quarter began on April 19, 2001, and continued through July 18, 2001; and that the fourth quarter began on August 1, 2001, and continued through October 30, 2001. The claimant testified that she sought employment during the qualifying period for the fourth quarter; that she registered with the Texas Rehabilitation Commission; and that she did not earn income during the qualifying period for the fourth quarter.

The claimant's entitlement to SIBs for the quarters at issue are governed by the provisions of Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102)). Eligibility criteria for SIBs entitlement are set out in Rule 130.102(b) which provides that an injured employee who has an IR of 15% or greater and who has not commuted any IIBs is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage (AWW) as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work. Both requirements are appealed.

The hearing officer did not err in determining that the claimant earned less than 80% of her AWW as a direct result of the impairment from her compensable injury. The Appeals Panel has held that the good faith job search and direct result requirements are different SIBs eligibility criteria and that the direct result criteria was not intended as another method to evaluate the job search requirement. Also, the Appeals Panel has said that a claimant need not establish that his or her impairment is the only cause of his or her unemployment or underemployment in order to satisfy the direct result criteria; rather, a claimant need only establish that his or her impairment is a cause of the unemployment or underemployment. Further, the Appeals Panel has noted that a finding that the claimant's unemployment or underemployment is a direct result of the impairment is "sufficiently supported by evidence that an injured employee sustained a serious injury with lasting effects and could not reasonably perform the type of work being done at the time

of the injury." See Texas Workers' Compensation Commission Appeal No. 961924 (Unpublished), decided November 14, 1996. In this instance, there is evidence from which the hearing officer could determine that the claimant's unemployment is a direct result of her compensable injury.

The hearing officer did not err in determining that the claimant made a good faith effort to obtain employment. Section 408.142(a)(4) provides that, in addition to the other eligibility requirements, an employee is entitled to SIBs if the employee has attempted in good faith to obtain employment commensurate with the employee's ability to work. Rule 130.102(d)(5) 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 provided sufficient documentation as described in Rule 130.102(e) to show that he or she has made a good faith effort to obtain employment. Rule 130.102(e) provides that, except as provided in Rule 103.102 (d)(1), (2), (3), and (4), "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 claimant's Application for [SIBs] (TWCC-52) for the qualifying period for the fourth quarter documents 63 job searches. The evidence sufficiently supports the hearing officer's determination that the claimant made a good faith effort to obtain employment commensurate with her ability to perform light work, as documented in the medical records and TWCC-52.

We are satisfied that the challenged determinations of the hearing officer are not 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, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **EMPLOYERS INSURANCE OF WAUSAU** and the name and address of its registered agent for service of process is
RICK KNIGHT
105 DECKER COURT, SUITE 600
IRVING, TEXAS 75062.

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge