

APPEAL NO. 020540
FILED APRIL 10, 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 February 13, 2002. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second quarter, commencing September 11, 2001, and continuing through December 10, 2001. The claimant appealed, urging that the hearing officer erred in determining entitlement to SIBs for the second quarter. The respondent (carrier) filed a response, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that the claimant reached maximum medical improvement on June 19, 2000, with a 17% impairment rating (IR); that the claimant did not commute any portion of the impairment income benefits (IIBs); that the second quarter began on September 11, 2001, and continued through December 10, 2001; that the qualifying period for the second quarter began on May 30, 2001, and continued through August 28, 2001; and that during the qualifying period for the second quarter of SIBs, the claimant did not apply for any job positions. The claimant testified that he was registered with the Texas Rehabilitation Commission; that he was not registered with the Texas Workforce Commission; and that he did not earn income during the qualifying period for the second quarter.

The claimant's entitlement to SIBs for the second quarter is 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 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. The second requirement is appealed by the claimant.

The hearing officer did not err in determining that the claimant did not make 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)(4), provides in pertinent part that

"[a]n 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 commented that there were other records which showed that the claimant "does have an ability to work at either a sedentary or light job position." The hearing officer determined that "[Dr. M's] April 16, 2001 medical record and the July 20, 2001 functional abilities evaluation are other records showing that the Claimant was able to return to work." The evidence sufficiently supports the hearing officer's determination that the claimant did not make a good faith effort to obtain employment commensurate with his ability to perform sedentary to light duty work, as documented in the medical records.

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 **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 I
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Edward Vilano
Appeals Judge