

APPEAL NO. 020548
FILED APRIL 4, 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 6, 2002. With regard to the disputed issues, the hearing officer determined that the appellant's (claimant) impairment rating (IR) was 25% as assessed by the designated doctor in an amended report and that the claimant was not entitled to supplemental income benefits (SIBs) for the first and second quarters. The hearing officer's decision on the IR issue has not been appealed and has therefore become final pursuant to Section 410.169.

The claimant appealed the SIBs determinations, asserting that he had not returned to work with the employer because he believed they "would not honor [his] work restrictions," that he had made good faith job searches, and that he continued to make good faith job searches even after he obtained a part-time job mid-way during the second quarter qualifying period. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and regulatory requirements for SIBs. At issue in this case is whether the claimant's job search efforts constituted a good faith effort to obtain employment commensurate with his ability to work. Section 408.142(a)(4). Rule 130.102(d) sets out the ways that an employee can demonstrate a good faith effort.

It appears undisputed that the claimant has some ability to work (unoperated-on cervical and lumbar injury) during the qualifying periods of the first quarter (March 22 through June 20, 2001), and the second quarter (June 21 through September 19, 2001). The claimant made some 11 or 12 job contacts during the first quarter qualifying period (clearly not making a contact every week as required by Rule 130.102(e)) and was offered employment at his preinjury wage by the employer in a letter dated May 15, 2001. The claimant testified that he did not believe the employer would honor his restrictions and did not even respond to the employer's offer. The hearing officer's determination that the claimant failed to make a good faith effort to find employment commensurate with his ability to work is supported by the evidence.

During the qualifying period for the second quarter, the claimant made some 20 job contacts and on August 16, 2001, obtained part-time employment working 25 hours a week. The hearing officer commented that although the claimant had found a part-time position, he had been released to full duty (see Rule 130.102(d)(1)) and that the claimant's other contacts were "only . . . calls to potential Employers every couple of days" and did not constitute a good faith effort. The claimant argues, on appeal, that calling a potential employer is not prohibited and that the calls constituted a good faith effort. We agree that

telephone contacts may show some effort, however, it is the hearing officer who determines whether those contacts constitute a good faith effort. Rule 130.102(e) sets out some of the information (criteria) which the hearing officer can consider in the determination of whether the claimant's job contacts amounted to a good faith effort.

We conclude that the hearing officer's determinations are supported by the evidence and 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).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **FIREMAN'S FUND INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DOROTHY C. LEADERER
1999 BRYAN ST.
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge