

APPEAL NO. 020604  
FILED MAY 2, 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 20, 2002. He determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the fifth quarter because he had returned to employment relatively equal to his ability to work.

The appellant (carrier) has appealed, arguing that there was no evidence that the claimant searched for a better paying job although he could have found one and had agreed at a benefit review conference (BRC) to cooperate with the carrier's vocational specialist. The carrier argues that the claimant was not truthful in expressing the number of hours he worked for his employer at a full-time job. The claimant responds that the decision is factually and legally supported.

DECISION

We affirm the hearing officer's decision.

The claimant's restrictions indicated that he could work 6 to 8 hours a day, with a 20-pound lifting limit and no allowable level of stooping, kneeling, pushing/pulling, reaching above his head, and crawling. All of these restricted functions had been required in his preinjury employment so he could not return to that job.

The claimant, during the qualifying period, was employed by a jeweler for what he said were hours from about 9:45 until 4:30, five days a week, and sometimes more. The claimant denied that he had expressed at the BRC that he worked a shorter period of time (10:30 until 3:30) as his ordinary working hours. He was paid \$200 a week but raised to \$300 a week. The job was within his restrictions.

The carrier argued that although the claimant had said he would cooperate with its vocational counselor, it was the testimony of that counselor (who for the most part obtained job leads through secondary sources) that the claimant did not apply to the places she furnished, as indicated by follow-up questionnaires that were returned by prospective employers. Approximately four questionnaires were returned. The claimant said that he contacted a few of the leads provided but for the most part did not undertake a search for employment because he already had a job with the jeweler.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) provides that an injured employee can be found to have made a good faith effort to seek employment commensurate with his ability to work if he has returned to work in a position that is relatively equal to the employee's ability to work. The question of whether the claimant returned to work in a job which is relatively equal to his ability to work was a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal

No. 000608, decided May 10, 2000; Texas Workers' Compensation Commission Appeal No. 000616, decided April 26, 2000. The focus of that inquiry is not on whether the wages are the same. Rather, "[w]hat is critical is that the evidence support the determination that the employment was relatively equal in terms of hours worked and the claimant's ability to work." Appeal No. 000608; Appeal No. 000616.

Even though some testimony, and a fact finding, were devoted to whether the claimant "cooperated" with the Texas Rehabilitation Commission (TRC), we note that such cooperation has no effect unless a claimant is enrolled and satisfactorily participates in a full-time vocational rehabilitation program during the qualifying period. See Rule 130.102(d)(2). The fact that the claimant "filed" with the TRC would not fulfill the good faith job search requirement, but because the hearing officer also found compliance with Rule 130.102(d)(1), sufficient basis exists for a finding of a good faith search. Likewise, whether the claimant did, or did not, abide by a BRC agreement is tangential to the question of entitlement to SIBs.

In evaluating the record, we cannot agree that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be manifestly unfair or unjust, and we affirm the hearing officer's 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

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE I  
AUSTIN, TEXAS 78701.**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Judge

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Roy L. Warren  
Appeals Judge