

APPEAL NO. 020835  
FILED MAY 7, 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 March 6, 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 compensable quarters. The claimant appealed the hearing officer's determinations on sufficiency of the evidence grounds, arguing that she had no ability to work and thus established good faith under the 1989 Act. The respondent (carrier) responded, requesting affirmance and contending that records showed the claimant had at least the ability to perform sedentary work.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the first and second compensable quarters.<sup>1</sup> The parties stipulated that the claimant had an impairment rating of 15% or greater and that she had not commuted any impairment income benefits. Not appealed is the finding that the claimant earned less than 80% of her average weekly wage during the qualifying periods in issue as a direct result of her impairment from the compensable injury. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(b)(1) (Rule 130.102(b)(1)) (general eligibility requirements).

The hearing officer found that the claimant did have a sedentary-to-light duty ability to work and neither worked nor searched for work commensurate with her ability during the qualifying periods for the first and second compensable quarters. In addition, the hearing officer found that the claimant did not contact the Texas Rehabilitation Commission (TRC) to see if she qualified for assistance. The claimant argued that she had no ability to work, as evidenced by her treating doctor's narrative and her testimony, and that she was not eligible for help from the TRC, as she had only a fourth grade education in the Phillippines. The carrier relied upon a functional capability evaluation and two doctors' reports in asserting that the claimant had some ability to work. The hearing officer is the sole judge of the weight and the credibility to be given the evidence. Section 410.165(a). Upon our review of the record, we conclude that the hearing officer's determination that the claimant did not make a good faith search for employment commensurate with her ability and is thus not eligible for first and second quarter SIBs, is supported by the evidence, and that it is 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); Texas Workers' Compensation Commission Appeal No. 001360, decided July 27, 2000.

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<sup>1</sup>The qualifying period for the first compensable quarter began July 13, 2001, and ended October 11, 2001, and the compensable quarter began October 25, 2001, and ended January 23, 2002. The qualifying period for the second compensable quarter began October 12, 2001, and ended January 10, 2002, and the compensable quarter began January 24, 2002, and ended April 24, 2002.

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

**JEFF AUTREY  
ROAN & AUTREY  
710 FIRST STATE BANK  
400 WEST 15TH STREET  
AUSTIN, TEXAS 78701-1647.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Roy L. Warren  
Appeals Judge