

APPEAL NO. 020918
FILED MAY 21, 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 (CCH) was held on March 8, 2002. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first quarter. The claimant appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision is affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in dispute is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the first quarter, which was from August 16 to November 14, 2001. The claimant contended at the CCH that he had no ability to work during the qualifying period due to his compensable injury, and on appeal contends that the hearing officer erred in determining that he did not make a good faith effort to obtain employment commensurate with his ability to work during the qualifying period. In order to prevail on his contention that he had no ability to work, the claimant needed to meet the requirements of Rule 130.102(d)(4), which 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 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 claimant's treating doctor released the claimant to light-duty work on July 18, 2001. The claimant did not work or look for work during the qualifying period. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations that the claimant failed to make a good faith effort to obtain employment commensurate with his ability to work during the qualifying period and that the claimant is not entitled to SIBs for the first quarter are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

On appeal, the claimant also contends that during the qualifying period he was enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) and thus made a good faith effort to obtain employment commensurate with his ability to work under Rule 130.102(d)(2). Documents that were admitted into evidence reflect that the claimant did not enter into a plan of vocational rehabilitation services with the TRC until after the end of the qualifying period and thus the claimant has not shown error in the hearing officer's

determination against him on the good faith criterion for SIBs for the relevant qualifying period.

The claimant contends that the hearing officer erred in excluding Claimant's Exhibit No. 14 from evidence. In order to show reversible error based upon the admission or exclusion of evidence, it must be shown not only that the evidentiary ruling was in error, but also that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Texas Workers' Compensation Commission Appeal No. 91003, decided August 14, 1991. We conclude that the claimant has not shown that error, if any, in the exclusion of Claimant's Exhibit No. 14, constitutes reversible error.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CAMDEN FIRE INSURANCE ASSOCIATION** and the name and address of its registered agent for service of process is

**C.J. FIELDS
5910 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75206.**

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge