

APPEAL NO. 021117
FILED JUNE 20, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on March 18, 2002, with the record closing on March 29, 2002, the hearing officer found that during the qualifying period for the fourth quarter, the appellant (claimant) did not attempt in good faith to obtain employment commensurate with her ability to work and concluded that she is not entitled to supplemental income benefits (SIBs) for that quarter. The claimant has appealed, contending that she did indeed make the required good faith effort, given her emotional state, and looked for work. The respondent (carrier) has replied and urges the sufficiency of the evidence to support the challenged determination.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work, as required by Section 408.142(a)(4) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.102(d)(5) and § 130.102(e) (Rule 130.102(d)(5) and Rule 130.102(e)). The claimant, who was awarded SIBs for the third quarter because she was found to have been enrolled in and satisfactorily participating in a full-time vocational rehabilitation program during the qualifying period, testified that she withdrew from all her college courses on _____, to avoid receiving failing grades, and that she made the various job search contacts listed on her Application for [SIBs] (TWCC-52) for the fourth quarter. The hearing officer makes clear in his detailed discussion of the evidence why he did not find credible the "documentation" of the job search contacts stated by the claimant on her TWCC-52.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W. 2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). We are satisfied that the challenged factual 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).

The decision and order of the hearing officer are affirmed.

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

**CT CORPORATION SYSTEM
350 NORTH. ST. PAUL STREET
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge