

APPEAL NO. 021382  
FILED JUNE 26, 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 April 24, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second or third quarters. 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 periods for the second and third quarters, which were from July 13, 2001, through January 10, 2002. It is undisputed that the claimant did not work or earn any wages during the relevant qualifying periods. The claimant contended that he looked for work commensurate with his ability to work.

Conflicting evidence was presented with regard to the claimant's ability to work. The claimant's treating doctor reported that the claimant is disabled due to the claimant's work-related left knee injury. The doctor who examined the claimant at the request of the carrier indicated that the claimant has some ability to work. The hearing officer found that during the relevant qualifying periods the claimant had some ability to work in some capacity, and that the claimant did not provide a narrative report from a doctor that specifically explained how the knee injury caused the claimant to have a total inability to work.

The record reflects that the claimant failed to document any job search during the qualifying period for the second quarter and failed to document a job search for seven weeks of the qualifying period for the third quarter. The hearing officer found that the claimant did not document a job search every week of the relevant qualifying periods. The hearing officer further found that the claimant did not attempt in good faith to obtain employment commensurate with his ability to work during the relevant qualifying periods and concluded that the claimant is not entitled to SIBs for the second and third quarters.

The claimant contends that Rule 130.102(d)(5) and (e) are inconsistent with and contravene Section 408.142(a)(4) and are therefore invalid. The Appeals Panel has previously held that it has no authority to decide the validity of rules of the Texas Workers' Compensation Commission (Commission). Texas Workers' Compensation Commission Appeal No. 010160, decided March 8, 2001. In that decision, the Appeals

Panel stated that it does not have the authority to decide the validity of Commission rules, that administrative rules are presumed to be valid, that the burden of proving the invalidity of a rule is on the party asserting invalidity, and that the courts are the proper forum for deciding the validity of agency rules.

The claimant contends that the hearing officer erroneously believed that the claimant had to prove every factor listed in Rule 130.102(e)(1)-(11) to be entitled to SIBs. In Texas Workers' Compensation Commission Appeal No. 002216, decided November 7, 2001, the Appeals Panel noted that the factors listed in Rule 130.102(e)(1)-(11) are to be considered, but are not an "exhaustive checklist," and that a good faith job search may be found where some of those factors are not present. The hearing officer's decision reflects that he correctly considered the factors listed in Rule 130.102(e) in determining whether the claimant made a good faith attempt to obtain employment commensurate with his ability to work, and we perceive no error in his doing so. We do not read the hearing officer's decision as requiring proof on each of those factors in order to be entitled to SIBs. We observe that a claimant who provides a fact finder with information in his favor on each of those factors will be more likely to prevail on an issue of SIBs entitlement than one who does not do so.

We disagree with the claimant's assertion that a claimant's job search efforts for SIBs entitlement may be established through the claimant's testimony alone, without supporting documentation. Rule 130.102(e) provides in relevant part that, except as provided in subsection (d)(1), (2), (3), and (4), of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts. The Appeals Panel has held that the documentation requirement of Rule 130.102(e) is mandatory and that a hearing officer cannot consider non-documented employment contacts in arriving at the good faith determination. Texas Workers' Compensation Commission Appeal No. 001715, decided September 7, 2000, and Texas Workers' Compensation Commission Appeal No. 992321, decided November 22, 1999. Texas Workers' Compensation Commission Appeal No. 000914, decided June 9, 2000, noted that the documented job search is not limited to the Application for SIBs (TWCC-52) and its attachments, but can include other documentation submitted by the claimant. In the instant case, the claimant failed to document his job search efforts, either on the TWCC-52s or by other documentation, for every week of the qualifying periods.

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 decision is supported by sufficient evidence and that it is 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).

The hearing officer's decision and order are affirmed.

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

**JAMES W. HOOKER  
10370 RICHMOND AVENUE  
HOUSTON, TEXAS 77042.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge