APPEAL NO. 021486
FILED JULY 9, 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 30, 2002. The hearing officer determined that the compensable injury includes and extends to depression and post-traumatic stress disorder (PTSD); that the claimant is not entitled to supplemental income benefits (SIBs) for the 10th and 11th quarters; and that if the carrier were liable for the 11th quarter SIBs, they would not begin to accrue until November 30, 2001, when the claimant filed his Application for [SIBs] (TWCC-52). The hearing officer's determination on the extent-of-injury issue has not been appealed.

The claimant appealed on four grounds: (1) that since the hearing officer found the claimant had continued depression and PTSD and had been paid SIBs for the prior nine quarters on that basis, the carrier, as a matter of law was not allowed to dispute SIBs; (2) that the claimant was relieved of any penalty for late filing because the carrier failed to send him the required form; (3) that the requirement for a medical narrative (in a total inability to work case) "is contrary to . . . the controlling statute"; and (4) that the doctrine of legislative acceptance does not apply. The carrier responds, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) through a total inability to work as set out in Rule 130.102(d)(4). The hearing officer's finding that the claimant's unemployment was a direct result of his impairment was not appealed. The parties stipulated that the qualifying periods for the 10th and 11th quarters were from March 23 through September 21, 2001.

Rule 130.102(d)(4) 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 hearing officer found that the claimant "had some ability to work in some capacity" during the applicable qualifying periods, that there was no medical narrative in evidence while specifically explained how the claimant's compensable injury (including the PTSD) caused a total inability to work and that the report of Dr. Z is an "other record" which showed that the claimant had an ability to work. We note that Dr. Z was a designated doctor appointed under the provision of Section 408.151(b) to give an opinion on whether the claimant's medical condition had improved sufficiently to allow

the employee to return to work. The hearing officer held that while Dr. Z's report did not have presumptive weight because it was received by the Texas Workers' Compensation Commission (Commission) well after the qualifying periods at issue (see Rule 130.110(a)), it did constitute an other record for purposes of Rule 130.102(d)(4).

The claimant challenges the hearing officer's decision in that since nothing had changed from the prior nine quarters (that the claimant "continues to have depression and PTSD"), pursuant to Rule 130.108(a) the carrier had no basis to challenge the entitlement to SIBs for the 10th and 11th quarters. We disagree. Rule 130.108(a) provides that the carrier shall not pursue a dispute of entitlement "without a factual or legal basis." In this case, the carrier submitted into evidence a report dated October 8, 2001 from Dr. L, a peer review doctor, who in a detailed 13 page report concluded the claimant did not have depression but had a passive-aggressive personality disorder. The hearing officer discussed this report, but found that the majority of the other medical evidence concludes that the claimant does have PTSD and depression. We further note that Dr. Z was appointed by letter dated September 17, 2001, just prior to the end of the 11th quarter qualifying period, to give an opinion on whether the claimant could return to work. Under these circumstances, we reject the claimant's contentions on this point that nothing had changed from the prior quarters.

Regarding the claimant's contention that he was improperly required "to file a narrative" when the "controlling statute" only requires the filing of a quarterly TWCC-52, the claimant correctly points out that Section 408.143(a)(3) requires "that the employee has in good faith sought employment commensurate with the employee's ability to work." Because the 1989 Act does not define "good faith" the Commission has promulgated rules whereby good faith can be shown in number of ways (see Rule 130.102(d) and (e)). One of those rules is Rule 130.102(d)(4), where an employee who has a total inability to work in any capacity case still can show a good faith effort to seek employment commensurate with his ability. We disagree that Rule 130.102(d)(4) is contrary or in conflict with the 1989 Act, rather it only establishes one of the several ways an employee can show a good faith effort of seek employment.

In that we are affirming the hearing officer's decision on the stated basis we need not separately address the late filing issue.

For the reasons stated the hearing officer's decision and order are affirmed.

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

JOSEPH A. YUROVICH
1431 GREENWAY DR., SUITE 450
IRVING, TEXAS 75038.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Gary L. Kilgore
Appeals Judge