

APPEAL NO. 022067
FILED SEPTEMBER 18, 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 July 15, 2002. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 24th quarter. The appellant (carrier) appealed, arguing that the claimant refused to cooperate with vocational rehabilitation services provided by the carrier and therefore as a matter of law is not entitled to SIBs for the 24th quarter. The carrier alternatively argues that the determination of the hearing officer of entitlement to SIBs is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. The claimant responded, 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 administrative rule requirements for SIBs. Rule 130.102(e) provides that a claimant with an ability to work "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." At issue in this case is whether or not the hearing officer committed error in finding that the claimant sought employment in good faith commensurate with her ability to work.

The carrier argues that the claimant refused to cooperate with the private vocational rehabilitation provider retained by the carrier because she failed to attend the job interviews of the three employment opportunities sent by the provider to the claimant during the qualifying period. The hearing officer was persuaded that the failure to attend was a mere failure of communication and not a refusal to cooperate.

We have previously held that the question of whether a claimant made a good faith job search is a question of fact. Texas Workers' Compensation Commission Appeal No. 94150, decided March 22, 1994; Texas Workers' Compensation Commission Appeal No. 94533, decided June 14, 1994. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we find the evidence sufficient to support the determination of the hearing officer that the claimant is entitled to SIBs for the 24th quarter.

We affirm the decision and order of the hearing officer.

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 ATREY
ROAN & AT REY
400 WEST 15TH STREET
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge