

APPEAL NO. 022073
FILED SEPTEMBER 17, 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 23, 2002. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the eighth or ninth quarters. The claimant appealed and the respondent (carrier) responded.

DECISION

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 eighth and ninth quarters, which were from December 16, 2001, to June 28, 2002. The claimant claimed he had no ability to work during the relevant qualifying periods. The parties stipulated that the claimant did not seek employment during the qualifying periods for the eighth and ninth quarters. There was no evidence that he was participating in any vocational rehabilitation program sponsored by the Texas Rehabilitation Commission or by a private provider of such services, and he testified that he was not working during the relevant qualifying periods.

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. Rule 130.102(e) provides in 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 hearing officer determined that during the relevant qualifying periods, the claimant had some ability to work with restrictions on the use of the right upper extremity; that the claimant failed to provide a narrative report from a doctor which specifically explained how his compensable injury caused a total inability to work; that there were two reports which were sufficient to constitute records showing that the claimant was able to return to work with restrictions; and that the claimant did not make a good faith search for employment commensurate with his ability to work. 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).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge