

APPEAL NO. 022427
FILED NOVEMBER 14, 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 September 4, 2002. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 13th quarter, and that the appellant (self-insured) is not entitled to reduce the claimant's SIBs to recoup a prior overpayment. The self-insured appealed both determinations and the claimant responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The qualifying period for the 13th quarter ran from February 19, 2002, through May 20, 2002. The claimant testified as to his physical restrictions due to his compensable injury, and his efforts at developing a home (on line auction) business, selling his 30-year collection of baseball memorabilia. The claimant testified that he worked four to eight hours per day, which was within his physical restrictions. He stated that during those hours, he prepared his auction listings, which required him to write copy, scan a photograph, and enhance the photograph by improving the color, cropping, and adding a border. On cross-examination, the claimant acknowledged that he only sold his personal belongings on (on line auction) and that he had not made any efforts in the four years he had been selling on (on line auction) to expand his efforts beyond selling his personal baseball memorabilia collection.

The hearing officer determined that the claimant satisfied the good faith requirement of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(1) (Rule 130.102(d)(1)) by returning to work in a position relatively equal to the ability to work. Self-employment can meet this criterion. However, in this instance, we believe that the hearing officer's good faith determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. In this instance, the record reflects that the claimant's efforts at establishing a home-based (on line auction) business is limited to selling his personal property at auction. There is no indication that the claimant had made any efforts to obtain other inventory to sell or had engaged in any other activity that would indicate that he was starting a business as opposed to selling his personal assets to make money. In the absence of any such evidence, there is simply insufficient evidence to demonstrate that the claimant satisfied the good faith requirement of Rule 130.102(d)(1). As such, we reverse the hearing officer's good faith determination and the determination that the claimant is entitled to SIBs for the 13th quarter and render a new determination that the claimant is not entitled to SIBs for the 13th quarter because he failed to prove that he satisfied the good faith requirement in the relevant qualifying period.

The hearing officer did not err in determining that the self-insured is not entitled to recoup any overpayment of SIBs that may have occurred in this case. We have long recognized that where an overpayment of SIBs is made because of a mistake on the part of the carrier, recoupment against future benefits is not appropriate. That determination was made to avoid an interruption of income replacement benefits. Texas Workers' Compensation Commission Appeal No. 990853, decided June 7, 1999.

The hearing officer's determination that the self-insured is not entitled to recoupment is affirmed. The determination that the claimant is entitled to SIBs for the 13th quarter is reversed and a new decision rendered that the claimant is not entitled to those benefits.

The true corporate name of the self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**CITY ATTORNEY
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge