

APPEAL NO. 022728
FILED DECEMBER 12, 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 (CCH) was held on October 9, 2002. With respect to the issues before him, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first, second, third, or fourth quarters. The claimant appealed the decision on sufficiency grounds and challenged the direct result finding; the respondent (carrier) 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. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rule 130.102(e). The parties did not dispute that the claimant sustained a compensable injury on _____; that he had an impairment rating greater than 15%; that he did not commute any portion of his impairment income benefits; that the qualifying periods for the first through fourth quarters ran from May 23, 2001, to May 21, 2002; and that the first through fourth quarters of SIBs ran from September 4, 2001, through September 2, 2002¹.

The requirements of Rule 130.102(e) are met by the claimant's good faith effort to find employment commensurate with his abilities to work during the qualifying periods in dispute. The claimant contends that actually working during the first and fourth quarter qualifying periods and looking for work with a temporary employment agency, and otherwise looking for work, during the times he was not working met the requirements of Rule 130.102(e). In addition, the claimant argued that he had been "in contact" with the Texas Rehabilitation Commission (TRC), but introduced into evidence a document showing only "contact" and not involvement in a full-time rehabilitation program with which he was fully complying. See Rule 130.102(d)(2) for requirements necessary to prove good faith effort to obtain employment by enrollment in, and satisfactory participation in, a full-time vocational rehabilitation program sponsored by the TRC.

The factors listed in Rule 130.102(e)(1) through (11) are factors that the hearing officer is to consider in determining good faith. The carrier argued that although the claimant did have a few weeks of work during the qualifying periods for the first and fourth quarters, he did not have work for eight consecutive months and did not look for work each week of the qualifying periods during that time. Nothing in our review of the

¹ In evidence, Hearing Officer's Exhibit No. 3, was a stipulation sheet for the individual dates for each quarter of SIBs at issue, though the parties did not so stipulate orally at the CCH.

record demonstrates that the hearing officer did not consider the requirements of Rule 130.102(e) in his evaluation of good faith effort determination. Good faith effort is a factual determination for the hearing officer to resolve and here, the hearing officer did not err in determining that the claimant did not attempt in good faith to obtain employment commensurate with the claimant's ability to work during the qualifying periods for any of the four quarters in dispute.

The hearing officer also made a challenged finding of fact that the claimant was not unemployed or underemployed as a direct result of his impairment during the qualifying periods for each of the four quarters. In his statement of the evidence, the hearing officer notes that "[t]he Claimant has shown that his work restrictions do not prevent him from working full-time and making more than 80% of his preinjury wages;" therefore, the claimant was not unemployed or underemployed as a direct result of his impairment. Although another fact finder may have reached a different conclusion on the same evidence, the hearing officer's determination on this matter is not so against the great weight and preponderance of the evidence as to mandate a reversal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge