APPEAL NO. 022873
FILED DECEMBER 16, 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 15, 2002. The hearing officer determined that the appellant/cross-respondent (claimant) was not entitled to SIBs for the seventh quarter but was entitled to SIBs for the eighth quarter.

The claimant appealed the hearing officer's determination for the seventh quarter and the respondent/cross-appellant (carrier) appealed the determination for the eighth quarter. The carrier responded to the claimant's appeal. The file does not contain a response from the claimant.

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 meeting the requirements of Rule 130.102(e). The hearing officer's determination on the direct result requirement has not been appealed.

The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the relevant qualifying periods for the seventh and eighth quarters. Although the claimant contended that he had a total inability to work and that his doctor had not released him to work the evidence does not support entitlement under Rule 130.102(d)(4) and the claimant proceeded under a theory of a good faith job search.

Rule 103.102(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 effort. In this case the claimant documented some 46 job contacts during the qualifying period for the seventh quarter. In evidence was a resume and a cover letter that the claimant had prepared for prospective employers. The cover letter stated:

> On _____, I received an on the job back injury and as a result I am currently temporarily and totally disabled. Due to the injury, I've had two unsuccessful lumbar laminectomy surgeries; therefore, an additional surgery (bone fusion) has been suggested.

> Consequently, my worker's compensation insurance carrier requires me to make a good faith effort to seek employment commensurate with my abilities. Therefore, I ask you to review my resume for possible employment with your company.

Although the hearing officer found that the claimant "looked for work in each week of the qualifying period," the hearing officer commented that the addition of the cover letter, quoted above, was reasonably construed to indicate that the claimant was medically disqualified from employment. The hearing officer determined that the claimant's employment efforts were not a good faith effort to obtain employment commensurate with his ability to work.

The claimant also made some 48 documented job contacts with at least one every week of the eighth quarter qualifying period. The claimant testified that he did not use the cover letter used in the seventh quarter because the carrier was claiming that he was sabotaging his efforts. The hearing officer determined that the claimant sought employment in positions commensurate with his ability to work. The carrier argues that the cover letter and the claimant's testimony clearly show that the claimant did not have a good faith attitude.

Section 410.165(a) provides that the CCH 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. An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburg, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). 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 overwhelming weight of the evidence as to be clearly wrong and unjust and we do not find it to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order on both quarters at issue is affirmed.

The true corporate name of the insurance carrier is **CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

CORPORATE SERVICES COMPANY
800 BRAZOS STREET
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Margaret L. Turner
Appeals Judge