

APPEAL NO. 023041
FILED JANUARY 6, 2003

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 October 30, 2002. The hearing officer resolved the disputed issue by determining that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the fifth quarter. The claimant appealed, arguing that the decision is contrary to the overwhelming weight of the evidence and that the hearing officer applied a higher standard to the claimant than the circumstances warranted. The respondent (carrier) responded, urging affirmance.

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 issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the fifth quarter. The hearing officer found that the claimant looked for employment commensurate with his ability to work every week of the qualifying period and documented his job search efforts. However, the hearing officer noted that "[t]he quality of that job search is questionable in light of the fact that one of the contacts was his wife's restaurant, and several others denied ever talking to him or being contacted by him." The hearing officer considered the evidence and found that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the fifth quarter. The hearing officer concluded that the claimant is not entitled to SIBs for the fifth quarter. 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 find no merit in the contention that the hearing officer applied a stricter standard to the claimant than the circumstances warranted. Rule 130.102(e) contains a number of factors which the reviewing authority may consider in evaluating the job search effort including the number and types of jobs sought, applications or resumes which document the efforts, cooperation with the Texas Rehabilitation Commission, the amount of time spent attempting to find employment, any job search plan by the injured employee, and so on. Thus, the factors referenced by the hearing officer in her decision were properly considered in evaluating the claimant's job search efforts in the qualifying period. Our review of the record reveals 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 or manifestly unjust. Thus, no sound basis exists for us to reverse the decision on appeal. 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 **EVEREST NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JEFFREY FORD
4514 COLE AVENUE, SUITE 1100
DALLAS, TEXAS 75205.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Gary L. Kilgore
Appeals Judge