

APPEAL NO. 023133
FILED JANUARY 17, 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 November 22, 2002. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the 14th quarter.

The appellant (carrier) appealed, contending that the cause of the claimant's underemployment was due to other "very significant, non-compensable injuries," and that the claimant had not sought full-time employment for positions for which he was qualified. The claimant 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 requirements of Section 408.142(a)(4) by meeting the requirements of Rule 130.102(e), and the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1).

It is undisputed that the claimant has had a number of prior serious injuries. The compensable injury at issue here is a left shoulder and left hip injury both of which required surgery. All the doctors, including the carrier's required medical examination (RME) doctor, appear to agree that the claimant cannot return to his preinjury heavy-duty job, although he could perform a light or sedentary type of work. The claimant's Application for [SIBs] (TWCC-52) showed 29 job contacts during the qualifying period and the claimant testified he had 2 interviews plus working part time for a rental car agency.

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. Rule 130.102(e) further sets out a number of factors for the hearing officer to consider in determining whether the claimant made a good faith effort to obtain employment commensurate with his or her ability to work, including, but not limited to, the number of jobs applied for; the type of jobs applied for; registration with the Texas Rehabilitation Commission; and the amount of time spent in attempting to find employment. There is no contention that the claimant failed to look for employment and document his efforts each week of the qualifying period.

The carrier, in alleging the claimant failed to meet the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1), argues that the claimant had other significant injuries which contributed to his underemployment and that he failed to apply for “full time work as a counter position” with his employer. The hearing officer specifically pointed out that the “compensable injury need only be a producing cause of the Claimant’s underemployment, not the sole cause.” We agree. Also the claimant testified that he had contacted the employer after he finished his rehabilitation but “nobody would talk to [him]” and they “wouldn’t call [him] back.” The hearing officer, as sole judge of the credibility of the evidence, could believe all, part, or none of the testimony of any witness including that of the claimant. Whether the claimants’ job contacts were for positions for which the claimant was qualified was strictly a matter for the hearing officer to resolve.

After review of the record before us and the complained-of determination, we have concluded that there is sufficient legal and factual support for the hearing officer’s decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer’s decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge