APPEAL NO. 030126
FILED FEBRUARY 26, 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 December 17, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first through sixth quarters.

The claimant appealed, indicating disagreement with statements made in the hearing officer's Statement of the Evidence, arguing that his exhibits were improperly excluded while the carrier's exhibits were admitted, and generally making disparaging remarks about the hearing officer and the carrier's attorney. The respondent (carrier) responded, generally urging affirmance. The claimant files a response to the carrier's response.

DECISION

Affirmed.

Initially we note that Section 410.202 does not provide for responses to responses and therefore we will not consider the claimant's response to the carrier's response.

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). Rule 130.102(b) provides that an injured employee who has an impairment rating (IR) of 15% or greater, and who has not commuted any impairment income benefits, is eligible to receive SIBs if, during the qualifying period, the employee: (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work. The hearing officer's determination that the claimant's unemployment during the applicable periods was a direct result of the impairment has not been appealed and will not be discussed further. There was no stipulation on the IR because the carrier represented that the issue of maximum medical improvement (MMI) and IR was in litigation in the court system. The hearing officer however found that the claimant reached MMI on January 28, 2000, with a 16% IR (apparently the facts that are in litigation).

The claimant was employed by a car rental business and sustained his compensable injury in a slip and fall. The claimant, at the time and since, had concurrent employment as a substitute schoolteacher and the hearing officer found that the wages from the school teaching job are not to be calculated in his average weekly wage from the employer. There was also some testimony about the assistance the claimant was receiving from the Texas Rehabilitation Commission (TRC), however

there was no evidence that the claimant's relationship with the TRC met the requirements of Rule 130.102(d)(2).

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 first, second, third, fourth, fifth, and sixth quarters. 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 had 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.

The claimant submitted an Application for [SIBs] (TWCC-52) for the qualifying periods at issue and listed 20 job contacts for each qualifying period. However none of the job contacts have a month, day, and year date. Consequently, the claimant had failed to properly document his search efforts as required by Rule 130.102(e) and it is impossible to determine whether there was a job contact every week of the qualifying period. We agree that the claimant did not meet the requirements of Rule 130.102(e).

Although the claimant disagrees with the hearing officer's Statement of the Evidence and makes some unsubstantiated assertions, he does not advise us how or why the hearing officer's determinations were against the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Many of the claimant's exhibits were excluded on objection by the carrier because they had not been timely exchanged pursuant to Rule 142.13(c)(1). The hearing officer found the carrier's exhibits to have been timely exchanged and relevant, overruling the claimant's objections. We find no error by the hearing officer on her rulings. Other instances where the claimant asserted that the hearing officer erred in her Statement of the Evidence are not supported by the record. Nor do we find any merit in the claimant's contention that the carrier's attorney "lied" on any matter relevant to the proceedings.

After review of the record before us and the complained-of matters, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. Cain, *supra*.

Accordingly the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Chris Cowan
Appeals Judge

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Roy L. Warren
Appeals Judge