

APPEAL NO. 030298
FILED MARCH 10, 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 January 15, 2003. The hearing officer determined that the respondent (claimant) was not entitled to supplemental income benefits (SIBs) for the first and second quarters, but was entitled to SIBs for the third and fourth quarters. The hearing officer's determinations regarding the first and second quarters were not appealed and have become final. Section 410.169.

The appellant (carrier) appeals the determinations for the third and fourth quarters, contending that the claimant had not met the good faith criterion and had not proven that her enrollment with the Texas Rehabilitation Commission met the satisfactory participation requirement. The claimant responds, 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 criteria 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(d)(1) and Rule 130.102(d)(2). The hearing officer's determination on the direct result requirement has not been appealed.

Rule 130.102(d)(1) provides that a claimant has made a good faith effort to obtain employment commensurate with the claimant's ability if the claimant had returned to work "in a position which is relatively equal to the injured employee's ability to work." The hearing officer found that during the qualifying period the claimant's requirement to attempt in good faith to obtain employment commensurate with her ability to work was satisfied because the claimant returned to work in a position relatively equal to her ability to work. Whether the claimant returned to work in a position relatively equal to the injured employee's ability to work is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 011787, decided September 21, 2001. Applying the standard of review set out above, we find no basis to overturn the hearing officer's finding that the claimant in good faith sought to obtain employment commensurate with her ability to work. The hearing officer could find that participation in the Goodwill program was employment notwithstanding the carrier's argument that the claimant's participation in the Goodwill program did not constitute employment but rather was part of her rehabilitation efforts to reenter the workforce. The hearing officer did so and that determination is affirmable.

A claimant need only show good faith by complying with any one of the subsections of Rule 130.102(d). Texas Workers' Compensation Commission Appeal No. 020713, decided April 17, 2002. In addition, if the claimant complies with Rule 130.102(d)(1) during any portion of the qualifying period, that will satisfy the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2).

In that we are affirming the hearing officer's decision for the third and fourth quarters of SIBs based on meeting the requirements of Rule 130.102(d)(1) we need not address whether the claimant also met the requirements of Rule 130.102(d)(2) other than to comment on the claimant's response that neither the 1989 Act, nor Texas Workers' Compensation Commission rules or any Appeals Panel decisions create an "irrebuttable presumption."

The hearing officer's decision and order are affirmed.

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

**DOROTHY C. LEADERER
1999 BRYAN STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Roy L. Warren
Appeals Judge