

APPEAL NO. 031299
FILED JULY 9, 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 April 24, 2003. With respect to the issue before her, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter. The claimant appeals that determination. There is no response from the respondent (carrier) contained in our file.

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 her ability to work during the qualifying period for the second quarter. The hearing officer found that the claimant documented 55 job searches during the qualifying period; however, she further determined that the claimant's efforts were insufficient to prove that she had satisfied the good faith requirement under Rule 130.102(e) by conducting a good faith job search. The hearing officer considered the evidence and found that the claimant did not make a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the third 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.

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 (TRC), the amount of time spent attempting to find employment, any job search plan by the injured employee, and so on. The hearing officer specifically noted that either none or very few of the employers contacted by the claimant were hiring; and that on the applications the claimant submitted to employers, the claimant limited her available work-hours to part-time employment, even though she had no such medical restrictions. The hearing officer was not persuaded that the 55 job searches rose to the level of a good faith search for employment. The hearing officer's determination in that regard is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The other question before the hearing officer was whether the claimant satisfied the good faith requirement pursuant to Rule 130.102(d)(2) by satisfactorily participating in a full-time vocational rehabilitation program sponsored by the TRC during the

qualifying period. In evidence was a January 24, 2003, letter from the TRC that indicated that the claimant was not following the Individualized Plan for Employment or responding to the TRC; consequently, the hearing officer determined that the claimant was not satisfactorily participating in a TRC program and, thus, did not meet the criterion set forth in Rule 130.102(d)(2). Our review of the record reveals that the hearing officer's determination 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 that determination, or the determination that the claimant is not entitled to SIBs for the third quarter, on appeal. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE** and the name and address of its registered agent for service of process is

**ROBERT PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge