

APPEAL NO. 031344
FILED JULY 16, 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 May 15, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 12th quarter, but is entitled to SIBs for the 13th quarter. The claimant appeals on evidentiary grounds. No response was filed. The hearing officer's determination with regard to 13th quarter SIBs was not appealed and is, therefore, final. Section 410.169.

DECISION

Reversed and remanded.

The hearing officer erred in determining that the claimant is not entitled to 12th quarter SIBs. Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) establish the requirements for entitlement to SIBs. At issue in this case is whether the claimant made a good faith effort to seek employment commensurate with his ability to work during the 12th quarter qualifying period, pursuant to Rule 130.102(d)(5). In order to qualify for SIBs under this subsection, a claimant must search for employment commensurate with his ability to work each week of the qualifying period and document his job search efforts. Rule 130.102(e). We have said that the required documentation need not be limited to the Application for [SIBs] (TWCC-52) but may include memoranda, notes, copies of applications, or written statements of persons with knowledge of the relevant facts. Texas Workers' Compensation Commission Appeal No. 001177, decided July 12, 2000. Notwithstanding, the claimant's failure to provide such documentation to the carrier in the TWCC-52 may be considered by the hearing officer in determining whether such contacts were, in fact, made. See *Id.* In this case, the claimant's TWCC-52 did not list a job search for the fifth week of the qualifying period, from October 6 through 12, 2002, but such contact was later documented in Claimant's Exhibit No. 5, entitled "Job Search" and dated "10-10-02." The hearing officer found, "During the 12th qualifying period, Claimant looked for work every week of the qualifying period but did not document a search one of the weeks." The hearing officer, then, determined that the claimant was not entitled to 12th quarter SIBs. In view of the applicable law and the evidence presented, we conclude that the hearing officer's determination is 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). Accordingly, we reverse and remand the hearing officer's determination for further consideration of the evidence consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision

must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CITY SECRETARY
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Edward Vilano
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge