

APPEAL NO. 031408
FILED JULY 23, 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 28, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the seventh quarter, July 11 through October 9, 2002; the eighth quarter, October 10, 2002, through January 8, 2003; or the ninth quarter, January 9 through April 9, 2003. The claimant appealed, arguing that she clearly established, through her testimony and written evidence, that she is entitled to SIBs for the quarters at issue. In its response, the respondent (carrier) urges 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 requirement of Section 408.142(a)(4) by complying with Rules 130.102(d)(2) and 130.102(d)(5). The claimant also appeals the hearing officer's findings on the direct result criteria. The parties stipulated that the claimant sustained a compensable injury on October 12, 1999, with an impairment rating of 15%; that she has not commuted any portion of her impairment income benefits; that the qualifying period for the seventh quarter of SIBs was from March 29 through June 27, 2002; that the qualifying period for the eighth quarter of SIBs was June 28 through September 26, 2002; and that the qualifying period for the ninth quarter of SIBs was from September 27 through December 26, 2002 .

The claimant contends that the hearing officer erred in determining that she failed to meet her burden regarding direct result. The claimant was required to establish that she earned less than 80% of her average weekly wage (AWW) as a direct result of the impairment from the compensable injury. Section 408.142(a)(2) and Rule 130.102(b)(1). An injured employee has earned less than 80% of the employee's AWW as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings. The Appeals Panel has held that the focus is not solely on whether the claimant has been released to the former job without restrictions. The hearing officer may also consider: (1) why the claimant was unemployed during the filing period; and (2) whether the impairment affected or impacted the claimant's unemployment or underemployment situation. Texas Workers' Compensation Commission Appeal No. 030096, decided March 6, 2003. In the instant case, the claimant testified that she could have returned to her pre-injury job during the qualifying periods of the quarters in issue had it been available. She additionally testified that the only restriction she had was not to lift over 40 pounds. The claimant testified that she was capable of performing physical labor as long as it

was not heavy physical labor. The hearing officer's direct result finding is supported by sufficient evidence.

Rule 130.102(d)(2) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) during the qualifying period. The claimant testified that the TRC told her it could not help her until she obtained her General Equivalency Diploma (GED). The hearing officer noted that there was inconsistency between the claimant's testimony and the documentation as to when the claimant actually attended classes for her GED.

With regard to the good faith criterion, Rule 130.102(e) provides 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. That subsection then lists information to be considered in determining whether a good faith effort has been made. Good faith effort is a factual determination for the hearing officer to resolve. There is sufficient evidence to support the finding that the claimant failed to provide sufficient documentation to show that she made a good faith effort to obtain employment commensurate with her ability to work during the qualifying periods at issue.

We have reviewed the complained-of determinations regarding direct result and SIBs entitlement and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are 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, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

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

**ROBIN MOUNTAIN
ACE USA
6600 E. CAMPUS CIRCLE DRIVE, SUITE 200
IRVING, TEXAS 75063.**

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge