

APPEAL NO. 031507
FILED AUGUST 1, 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 respondent (claimant) was entitled to supplemental income benefits (SIBs) for the 16th, 17th, 19th, 20th, and 21st quarters and was not entitled to SIBs for the 18th quarter.

The appellant (carrier) appeals, contending that the claimant did not meet either the good faith or direct result requirements for entitlement to SIBs. The file does not contain a response from the claimant.

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 carrier appeals both the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1) and the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2). The parties stipulated to a compensable injury, that the claimant has an impairment rating of 15% or greater, that impairment income benefits have not been commuted, and the qualifying periods, which ran from January 12, 2001, through July 11, 2002.

The claimant sustained a compensable head, neck, and left leg (knee) injury on _____, but he has not had surgery. The claimant submitted a medical report from his treating doctor, Dr. G for each of the claimed quarters but while those reports document problems and complaints they do not establish a total inability to work (See Rule 130.102(d)(4)). A report of May 4, 2001, continues the claimant in a light-duty status. The carrier's doctor, in a report dated January 12, 1999, released the claimant to "very light duty."

For the 16th quarter qualifying period, the claimant looked for a number of jobs and succeeded in obtaining employment with a construction company as a "maintenance man" (doing cleanup at the construction site). In evidence are check stubs for the last four weeks of the 16th quarter qualifying period. For the 17th quarter, the claimant made no job searches but the check stubs appear to indicate that he worked 13 weeks during that quarter. In the 18th quarter qualifying period, the claimant made no searches and did not appear to be employed. (The hearing officer found the claimant was not entitled to SIBs for that quarter and that determination has not been appealed.) The claimant made no searches but appears to have worked most of the 19th quarter qualifying period (only 10 or 11 check stub copies are in evidence but calculations are based on 13 weeks). For the 20th quarter qualifying period, the claimant made no searches but appears to have had earnings in at least 11 of the 13

weeks. In the 21st quarter qualifying period, the claimant made no searches and appears to have worked only one week. The claimant testified that he worked as much as he could and that his condition is getting progressively worse. No medical evidence refutes that contention and Dr. G's report of March 12, 2002, seeks a referral to a neurologist for follow-up testing.

The hearing officer makes determinations that the claimant had returned to work in a position which was relatively equal to the claimant's ability to work for all the qualifying periods except for the 18th quarter. Rule 130.102(d)(1) provides that a good faith effort to obtain employment has been met if the employee has returned to work in a position relatively equal to the injured employee's ability to work. Although the carrier argues that claimant did not seek "any employment where potentially available employment was advertised" and that the claimant "simply chose to be under employed" those were factual matters for the hearing officer to resolve. Similarly, whether the claimant's underemployment was a direct result of the impairment from the compensable injury or was for some other reason was a factual matter for the hearing officer, as the sole judge of the weight and credibility of the evidence to resolve. Section 410.165(a).

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations 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).

Accordingly, we affirm the hearing officer's decision and order.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge