

APPEAL NO. 031541
FILED JULY 31, 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 30, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second quarter. The claimant appealed, contending that he was unable to work during the qualifying period for the second quarter and that he looked for work in good faith. The respondent (carrier) requests affirmance.

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 dispute is whether the claimant made a good faith effort to obtain employment commensurate with the claimant's ability to work during the qualifying period for the second quarter. Rule 130.102(d)(4) 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 unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. 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. Rule 130.102(e) lists information to be considered in determining whether the injured employee has made a good faith effort to obtain employment, which includes, among other things, the number of jobs applied for, applications which document the job search efforts, amount of time spent in attempting to find employment, and any job search plan by the injured employee.

The treating doctor reported that the claimant is unable to work at any occupation, but did not explain how the claimant's compensable injury causes a total inability to work. The carrier's required medical examination doctor examined the claimant during the qualifying period for the second quarter and reported that the claimant is able to work with certain restrictions. The claimant provided copies of numerous business cards. He said he made no applications for employment during the second quarter because none of the businesses he went to were hiring. The hearing officer found that the claimant was able to work during the qualifying period for the second quarter; that the claimant's job search consisted of collecting business cards, but not applying for work; and that the claimant did not attempt in good faith to obtain employment commensurate with his ability to work during the qualifying period for the

second quarter. The hearing officer concluded that the claimant is not entitled to SIBs for the second 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. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision 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 and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

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

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge