

APPEAL NO. 031958
FILED AUGUST 7, 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 28, 2003. With respect to the disputed issue before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third compensable quarter. The claimant appeals this determination. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Section 408.142(a) outlines the requirements for SIBs eligibility as follows:

An employee is entitled to [SIBs] if on the expiration of the impairment income benefit period [IIBs] computed under Section 408.121(a)(1) the employee:

- (1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;
- (2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;
- (3) has not elected to commute a portion of the [IIBs] under Section 408.128; and
- (4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(5) (Rule 130.102(d)(5)) provides, in pertinent part, that an injured employee has made the required good faith effort if the employee "has provided sufficient documentation as described in subsection (e) of this section to show that he or she has made a good faith effort to obtain employment." Rule 130.102(e) provides that 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) then lists information to be considered in determining whether the injured employee has made a good faith effort, including, among other things, the number of jobs applied for, applications which

document the job search, the amount of time spent in attempting to find employment, and any job search plan.

The claimant argues that the hearing officer erred by not considering the “undocumented time” she spent searching for a job. In Texas Workers' Compensation Commission Appeal No. 992321, decided November 22, 1999, we held that the documentation requirement of Rule 130.102(e) was mandatory and that a hearing officer could not consider nondocumented employment contacts in arriving at the good faith determination. *See also* Texas Workers' Compensation Commission Appeal No. 992247, decided November 23, 1999. Whether the claimant satisfied the good faith requirement for SIBs entitlement as provided for in Rule 130.102(e) was a factual question for the hearing officer to resolve. Nothing in our review of the record indicates that the hearing officer’s decision 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, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge