

APPEAL NO. 032423
FILED OCTOBER 28, 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 (CCH) was held on July 16, 2003, with the record closing on August 12, 2003. The hearing officer determined that the appellant/cross-respondent (claimant) was not entitled to supplemental income benefits (SIBs) for the first, second, or third quarters.

The claimant appealed, contending that he was unable to work during the qualifying periods, and that he was in a full-time vocational program sponsored by the Texas Rehabilitation Commission (TRC) during the third quarter qualifying period. The claimant also submitted information about the SIBs fourth quarter benefit review conference, which was not in issue here. The respondent/cross-appellant (carrier) filed a (conditional) appeal disputing the hearing officer's determination that the claimant had made a good faith job search during the third quarter qualifying period. The carrier also responded to the claimant's appeal, urging 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 claimant asserts entitlement to SIBs for the first and second quarters based on a total inability to work and enrollment in a full-time vocational program sponsored by the TRC during the third quarter qualifying period. Section 408.142(a) and Rule 130.102(b) provide:

- (b) Eligibility Criteria. An injured employee who has an impairment rating [IR] of 15% or greater, and who has not commuted any impairment income benefits [IIBs], is eligible to receive [SIBs] if, during the qualifying period, the employee:
 - (1) has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury; and
 - (2) has made a good faith effort to obtain employment commensurate with the employee's ability to work.

The parties stipulated that the claimant sustained a compensable low back injury on _____; that the IR was 17%; that IIBs was not commuted; and that the qualifying periods were from June 15 through September 13, 2002; from September 14 through December 13, 2002; and from December 14, 2002, through March 14, 2003, respectively.

The claimant testified that he returned to work after his _____, injury in November 2001. The claimant then alleged another injury (by aggravation) on (alleged date of injury), and missed some work from that injury. The evidence confirms a release to return to full duty on June 6, 2002, but the claimant apparently did not return to work after (alleged date of injury). On October 31, 2002, another hearing officer, at another CCH, determined that the (alleged date of injury), alleged injury was not a new compensable injury. Because of evidence from that CCH, the claimant's employment was apparently terminated around November 2 or 3, 2002, because of a false employment application (the claimant said he resigned on or about November 15, 2002). The claimant began working with the TRC in December 2002 and attended classes beginning in January 2003.

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. There was no evidence of a narrative report from a doctor that specifically explains how the compensable _____ injury caused a total inability to work during the relevant qualifying periods. The hearing officer commented that any ability to work was due to the noncompensable (alleged date of injury) injury. The hearing officer further found that the claimant had the ability to perform his preinjury job during the three qualifying periods. The hearing officer instead found that the claimant did not meet the direct result requirement of Rule 130.102(b)(1) because the "claimant's unemployment/underemployment" during the qualifying periods "was not a direct result of the impairment" from the compensable injury. The hearing officer's commentary would indicate that he thought the unemployment was due to the (alleged date of injury) noncompensable injury. We would add that the hearing officer could have also considered that the claimant's unemployment after early November 2002 could have been due to his employment termination (or resignation) rather than the compensable _____ injury.

The hearing officer's determination that during the third quarter qualifying period the claimant "made a good faith effort to find work in line with his work ability" is supported by evidence and testimony regarding his efforts with the TRC by meeting the good faith requirement of Rule 130.102(d)(2).

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

**PRENTICE HALL CORPORATION SYSTEM, INC.
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge