

APPEAL NO. 032568
FILED NOVEMBER 17, 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 August 29, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant herein) was not entitled to supplemental income benefits (SIBs) for the 9th, 10th, and 11th compensable quarters. The claimant appealed on sufficiency grounds, and the respondent (carrier herein) responded, urging affirmance.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

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)(4) and 130.102(e). It is undisputed that the claimant sustained a compensable injury on _____; that the claimant has reached maximum medical improvement with an impairment rating of 15% or greater; and that the qualifying periods were from September 5 through December 4, 2002, for the 9th quarter; December 5, 2002, through March 5, 2003, for the 10th quarter; and March 6 through June 4, 2003, for the 11th quarter. The hearing officer made undisputed findings that the claimant's unemployment/underemployment was a direct result of the impairment from the compensable injury.

The claimant asserts that he met the good faith job search requirement of Rule 130.102(b)(2) by compliance with Rule 130.102(d)(4) for the 10th quarter. In other words, the claimant proceeded on the theory that he had no ability to work. 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. The hearing officer found that the claimant had some ability to work, and that he thus did not make a good faith effort to secure employment commensurate with his abilities.

Regarding the 9th and 11th quarters, the claimant alleged that he obtained employment, and also continued to seek further employment. The claimant testified that he worked part-time during the qualifying periods for these quarters doing yard work. The hearing officer stated that the claimant's work was not relatively equal to his ability to work. The hearing officer stated that he believed that the claimant was capable of full-time work. Nor did the hearing officer find that the claimant's job search satisfied the requirements of Rule 130.102(e) because the claimant failed to establish

that he sought work during every week of the qualifying periods for the either the 9th or the 11th quarters.

After review of the record before us and the complained-of determination, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

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

**CINDY GHALIBAS
7610 STEMMONS FREEWAYS
DALLAS, TEXAS 75247.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge