

APPEAL NO. 032715
FILED NOVEMBER 13, 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 September 24, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 10th quarter. The claimant appeals, asserting that she made a good faith effort to obtain employment. The respondent (carrier) responds, 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 SIBs criterion in dispute was whether the claimant made a good faith effort to obtain employment commensurate with her ability to work during the qualifying period for the 10th quarter. The parties stipulated that the qualifying period for the 10th quarter was from February 12 through May 13, 2003. Rule 130.102(e) provides in part 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

As to whether the claimant made a good faith effort to seek employment commensurate with her ability to work, while the claimant listed approximately 160 job contacts during the qualifying period for the 10th quarter, the hearing officer noted that a majority of the employers listed on the Application for [SIBs] (TWCC-52) were not hiring, that the claimant listed contacts with businesses that are no longer open and were not open when the claimant alleged she visited them, and that the claimant did not have a well-structured job search plan. Rule 130.102(e) sets forth a number of factors for the hearing officer to consider in determining whether the claimant made a good faith effort to obtain employment commensurate with her ability to work, including, but not limited to, the number of jobs applied for and the types of jobs sought by the claimant. The issue in dispute presented a question of fact for the hearing officer to resolve based on the evidence presented. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer was not persuaded that the claimant's efforts amounted to a good faith effort to obtain employment commensurate with the claimant's ability to work. The hearing officer's decision is supported by sufficient evidence and 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, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION** for Legion Insurance Company, an impaired carrier and the name and address of its registered agent for service of process is

**MARVIN KELLY
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge