

APPEAL NO. 032752
FILED DECEMBER 3, 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 8, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second quarter. The claimant appealed, disputing the determination of nonentitlement. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and rendered.

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). Rule 130.102(d)(1) 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 returned to work in a position which is relatively equal to the injured employee's ability to work. It was undisputed that the claimant was employed for a portion of the qualifying period. Although the hearing officer neglected to make a specific finding of fact regarding whether the claimant's employment satisfied the good faith requirement, it is apparent from her discussion of the evidence that she was persuaded it did. The hearing officer noted in her Discussion that "during the first six and one-half weeks of the qualifying period, [c]laimant was working in a position relatively equal to his ability to work." Although she acknowledged that there is case authority to support the proposition that working during only a portion of the qualifying period is sufficient to satisfy Rule 130.102(d)(1), the hearing officer erred in failing to apply such authority.

A claimant need only show good faith by complying with any one of the subsections of Rule 130.102(d). Texas Workers' Compensation Commission Appeal No. 020713, decided April 17, 2002. In addition, if the claimant complies with Rule 130.102(d)(1) during any portion of the qualifying period, that will satisfy the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2). Texas Workers' Compensation Commission Appeal No. 032127, decided October 1, 2003; Texas Workers' Compensation Commission Appeal No. 030759, decided May 15, 2003; Texas Workers' Compensation Commission Appeal No. 030298, decided March 10, 2003; and Texas Workers' Compensation Commission Appeal No. 020710, decided April 30, 2002. The hearing officer erred as a matter of law in failing to apply the relevant authority.

The hearing officer's decision that the claimant is not entitled to SIBs for the second quarter is reversed and a new decision is rendered that the claimant is entitled to SIBs for the second quarter.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE I
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge