

APPEAL NO. 032887
FILED DECEMBER 11, 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 October 1, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the third (October 24, 2002, through January 22, 2003), fourth (January 23 through April 23, 2003), fifth (April 24 through July 23, 2003), and sixth (July 24 through October 22, 2003) quarters; and that the claimant permanently lost entitlement to SIBs. The claimant appealed, disputing the determinations of nonentitlement as well as the determination that the claimant has permanently lost entitlement to SIBs because of nonentitlement to four consecutive quarters. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The hearing officer noted at the CCH that the carrier requested the addition of the issue of permanent nonentitlement for four quarters. She then asked the parties if their understanding of the two issues to be tried at the CCH were SIBs eligibility for the third, fourth, fifth, and sixth quarters, as well as the issue of permanent nonentitlement and both parties agreed that those were the issues in dispute

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 Rule 130.102(d)(5). The parties stipulated that the claimant sustained a compensable injury on _____, with an impairment rating of 16%; that he has not commuted any portion of his impairment income benefits; that the qualifying period for the third quarter of SIBs was from July 13 through October 11, 2002; that the qualifying period for the fourth quarter of SIBs was from October 12, 2002, through January 10, 2003; that the qualifying period for the fifth quarter of SIBs was from January 11 through April 11, 2003; and that the qualifying period for the sixth quarter of SIBs was from April 12 through July 11, 2003.

The hearing officer did not err in determining that the claimant did not satisfy the good faith requirement in the qualifying periods for the third, fourth, fifth, and sixth quarters. The hearing officer was not persuaded that the evidence presented by the claimant was sufficient to satisfy the requirements of Rule 130.102(e). Rule 130.102(e) provides 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. That subsection then lists information to be considered in determining whether a good faith

effort has been made. Good faith effort is a factual determination for the hearing officer to resolve. There is sufficient evidence to support the finding that the claimant failed to make a good faith effort to obtain employment commensurate with his ability to work during the qualifying periods at issue. The hearing officer noted that it was apparent that the business names offered as a job search were offered to simply qualify for SIBs each quarter rather than to become employed. Nothing in our review of the hearing officer's determination in that regard reveals that it is so against the great weight as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, we affirm the determination that the claimant is not entitled to SIBs for the third, fourth, fifth, and sixth quarters.

The claimant's contention that the hearing officer erred in determining that the claimant has permanently lost entitlement to SIBs under Section 408.146(c) is based on its assertion that the claimant is entitled to SIBs for the third, fourth, fifth and sixth quarters. Since we are affirming the hearing officer's decision that the claimant is not entitled to SIBs for the third, fourth, fifth, and sixth quarter, we conclude that the hearing officer did not err in determining that the claimant has permanently lost entitlement to SIBs under Section 408.146(c), which provides that an employee who is not entitled to SIBs for 12 consecutive months ceases to be entitled to any additional income benefits for the compensable injury.

We affirm the decision and order of the hearing officer.

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

**HAROLD FISHER, PRESIDENT
3420 EXECUTIVE CENTER DRIVE, STE 200
AUSTIN, TEXAS 78731.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge