

APPEAL NO. 032921
FILED DECEMBER 29, 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 October 14, 2003. The hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 9th and 10th quarters. The claimant appeals these determinations. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Section 408.142 provides that an employee continues to be entitled to SIBs after the first quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with her ability to work.

At issue in this case is whether the claimant satisfied the good faith criteria for SIBs entitlement. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)), relied upon by the claimant in this case, states that the "good faith" criterion will be met 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[.]

Alternatively, Rule 130.102(d)(5), which was also relied upon by the claimant for SIBs entitlement, provides that the good faith requirement may be satisfied if the claimant "has provided sufficient documentation as described in subsection (e)." Rule 130.102(e) states that "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." The rule then lists information to be considered in determining whether the injured employee has made a good faith effort, including, among other things, the number of jobs applied for, applications which document the job search, the amount of time spent in attempting to find employment, and any job search plan.

Whether the claimant satisfied the good faith requirements of either Rule 130.102(d)(4) or Rule 130.102(d)(5) was a factual question for the hearing officer to resolve. The hearing officer noted that the claimant had some ability to work during both of the qualifying periods in question; that he failed to document a job search during each week of the 9th quarter qualifying period; and that although he documented a job

search during each week of the 10th quarter qualifying period, “the majority of the searches were at employers who were not even hiring.” The hearing officer concluded that the claimant was not entitled to SIBs for the 9th and 10th quarters. Nothing in our review of the record indicates that the hearing officer’s decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Chris Cowan
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge