APPEAL NO. 033061
FILED JANUARY 14, 2004

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 29, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the fourth quarter based on a good faith job search every week of the qualifying period. The appellant (self-insured) appealed, contending that the claimant's job search efforts were not in good faith and that the claimant's unemployment was not a direct result of his impairment. There is no response in the file from the claimant.

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 criteria in issue are whether the claimant made a good faith effort to obtain employment commensurate with his ability to work (Rule 130.102(b)(2)) and whether the claimant's unemployment was a direct result of the impairment from the compensable injury (Rule 130.102(b)(1)). The parties stipulated that the qualifying period for the fourth quarter was from April 30 through July 29, 2003.

Attached as part of the claimant's Application for [SIBs] (TWCC-52) are several pages of job contacts that the claimant contends he made during the qualifying period (about 173 contacts). The self-insured, both at the CCH and on appeal, principally attacks the quality of the job contacts and asserts that many were by telephone taken out of the telephone book. Our review of the record does not confirm that the claimant was actually offered a job, rather he was called to an interview of a job that he thought he could do but did not have transportation to the interview. Notwithstanding the self-insured's contention, the hearing officer found that the claimant "did conduct a well-structured job search plan." The hearing officer is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The fact that another fact finder might have drawn other inferences from the evidence and reached a different conclusion is not a sound basis on which to reverse the hearing officer's decision. Salazar, *et al*. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The self-insured cites two Appeals Panel decisions which it believes have similar facts and would warrant a reversal in this case. In Texas Workers' Compensation Commission Appeal No. 002555, decided December 18, 2000, the Appeals Panel reversed a hearing officer's determination of a good faith job search; however, in that case, the hearing officer had also found that the claimant had failed to document job contacts every week of the qualifying period. *See* Rule 130.102(e) for the requirement

to document the job search efforts "every week of the qualifying period." Similarly, in Texas Workers' Compensation Commission Appeal No. 001877, decided September 19, 2000, after discussing elements of what is necessary for a good faith job search, the Appeals Panel, in reversing a hearing officer's determination of entitlement based on a good faith job search, concluded:

> In this case, it is undisputed that the claimant did not seek employment commensurate with her ability to work during the weeks of March 20, April 10, and April 24, 2000, and, therefore, the claimant did not meet the requirements of Rule 130.102(e).

As for the direct result requirement of Rule 130.102(b)(1), the Appeals Panel has frequently noted that a finding that the claimant's unemployment or underemployment is a direct result of the impairment is sufficiently supported by the evidence if the injured employee sustained a serious injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996; Texas Workers' Compensation Commission Appeal No. 030005, decided February 10, 2003. In this case the claimant also testified that he believed that he would have been offered a job except for his restrictions.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

MAYOR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Margaret L. Turner
Appeals Judge